



3 1761 11638438 9



Presented to
The Library
of the
University of Toronto
by


PROFESSOR J.H.G. CRISPO

HANDBOUND
AT THE



UNIVERSITY OF
TORONTO PRESS

Government
Publications



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116384389>



UNIVERSITY OF TORONTO
BUSINESS SCHOOL
READING ROOM

RUBBER PRODUCTS



Investigation into Alleged Combines in the
Manufacture, Distribution and Sale

of

Mechanical Rubber Goods

Tires and Tubes

Accessories and Repair Materials

Rubber Footwear

Heels and Soles

Vulcanized Rubber Clothing



REPORT OF COMMISSIONER, COMBINES INVESTIGATION ACT
DEPARTMENT OF JUSTICE, OTTAWA
1952



918131

COMBINES INVESTIGATION COMMISSION

DEPARTMENT OF JUSTICE

OTTAWA

May 21, 1952

Honourable Stuart S. Carson, Q.C.,
Minister of Justice,
Ottawa

Sir:

I have the honour to submit to you the following report of an investigation under the Combines Investigation Act into an alleged combine or combines in the manufacture, distribution and sale of certain rubber goods and related products. The inquiry was initiated by my predecessor in office, Mr. F. A. McGregor, in September 1947 under Section 12 of the Combines Investigation Act following complaints received from a Department of the Federal Government respecting identical price quotations which had been submitted on tenders for rubber goods.

The investigation has been directed primarily to the activities of some two dozen Canadian companies, with respect to the manufacture, distribution and sale in Canada of the following six classes of rubber products: mechanical or industrial goods, rubber tires and tubes, car accessories and repair materials, rubber and canvas footwear, heels and soles and vulcanized rubber clothing. The periods covered lay between 1932 and 1948.

In the course of the investigation several thousand documents pertaining to the matters under investigation, were obtained from the parties concerned. These were obtained in the fall of 1947, during 1948, and early in 1949. One company refused to produce a particular document before the Commissioner on the ground that it was a privileged communication between solicitor and client.

The Commissioner thereupon applied to the Supreme Court of Ontario, under the provisions of section 22 of the Combines Investigation Act, for authority to penalize the officer who was withholding the document. The Court, on June 23, 1948 decided that the document was not privileged and it was thereupon immediately produced.

Private hearings relating to the matters under investigation were held in the cities of Toronto, Montreal and Ottawa before Mr. I. M. MacKeigan, then Deputy Commissioner under the Combines Investigation Act. Eighty-four witnesses gave evidence during sixty-five days of hearings in the months of October, November and December of 1948 and February, March, April, May, June, September, October and December of 1949. Nearly

(ii)

all the witnesses were represented by counsel who at the same time represented the companies by whom the witnesses were employed. In addition, by arrangement among the parties, one counsel appeared continuously throughout most of the hearings.

Mr. T. N. Phelan, Q.C. and Mr. Walter M. Martin, Q.C., both of Toronto, had been appointed by your predecessor, under section 26 of the Act, to assist in the investigation and they attended at many of the hearings and examined the witnesses. Assistance throughout the inquiry was also given by Messrs. M. J. Beauchemin, R. M. Davidson, J. W. Morrow and G. A. MacKay, members of the staff of this Commission.

After my appointment as Commissioner of the Combines Investigation Act on February 23, 1950, I continued the investigation. To supplement the information already available in the documentary and oral evidence and in the submissions filed by the companies at the hearings and through correspondence, additional returns of information were requested by me from several of the companies. Some of the companies in submitting these returns, stated that they did so without prejudice to their right to contest my jurisdiction in the matter.

In the summer of 1950 Mr. Phelan, the senior counsel for the Commission, prepared, at my request, a statement summarizing the effect of the evidence. This "Statement of Commission Counsel" was sent by me to the parties concerned on September 1, 1950 as notice of the charges alleged in order that the parties might have full opportunity to be heard, as provided in the Inquiries Act, before conclusions were reached or a report made.

The parties concerned in the "Statement of Commission Counsel" appeared before me in Ottawa on October 2, 1950 by counsel and submitted that I had no jurisdiction to continue with and make a report on an inquiry which had been commenced by my predecessor in office, and they expressed a desire to have the question of my jurisdiction tested in the courts. I thereupon adjourned the hearings to October 16. On October 11, 1950 I advised the companies, through their counsel, that having further considered the matter and having received from the Department of Justice an opinion to the effect that I had jurisdiction to continue the investigation, I had decided to continue it accordingly and I set October 26, 1950 as the date on which the parties would be given full opportunity to be heard in person or by counsel upon the issues of what conclusions should be drawn and what report made. On October 17, 1950 a writ was issued against me in the Supreme Court of Ontario by the parties concerned in the "Statement of Commission Counsel" seeking a declaration that I had no jurisdiction to continue the investigation, and on October 23 I advised the parties concerned that the hearings set down for October 26 at Ottawa were postponed.

The Statement of Claim accompanying the writ recited the salient facts relating to the investigation and asked for a declaration that I was not the Commissioner named in Section 27 of the Combines Investigation Act

(111)

and that I had no power thereunder to make a report in writing to the Minister on the said investigation. It also claimed an injunction restraining me from presenting a report on the said investigation pursuant to the provisions of the Act. Subsequently a motion for an interlocutory injunction and a cross-motion for dismissal of the action were launched in the same Court. Arguments on these motions were heard on November 20, 1950 by Mr. Justice Spence, who on November 27, 1950 gave judgment dismissing with costs the entire action. The plaintiffs appealed from this judgment on December 11, 1950. On February 20, 1951 Chief Justice Robertson, delivering the unanimous decision of the Court of Appeal, dismissed the appeal with costs.

April 3, 1951 was then set as the date on which I would receive oral or written representations and on that day all the parties appeared together before me in Ottawa in person or by counsel and during the course of three days made substantial representations relating to the matters set out in the "Statement of Commission Counsel" and the rubber industry generally. These representations were made in some cases orally and in other cases both orally and in briefs. Certain of the parties then requested and were given the opportunity to present further representations or material on matters arising out of the present hearings until on or before May 15, 1951.

Yours faithfully,

(Sgd.) T. D. MacDonald

Commissioner
Combines Investigation Act

CONTENTS

	<u>Page</u>
<u>PART I - INTRODUCTION</u>	1
Chapter 1 - General Information	2
A. Purpose of the Part	2
B. Products	2
C. Parties	2
D. Historical	12
E. Period Covered by the Investigation	13
Chapter 2 - Statistical	14
A. Geographical Distribution of Rubber Plants	14
B. Size of Manufacturers	16
(a) Selling Value of Products	16
(b) Consumption of Rubber	17
(c) Number of Employees	19
C. Capital Investment	19
D. Imports and Exports	22
Chapter 3 - Wartime Controls	23
A. Supply Control	23
B. Subsidies	25
C. Price Controls	25
D. Equitable Distribution	26
E. Export-Import Controls	27
F. General	28
Chapter 4 - Expurgation of Minutes	29
Chapter 5 - Significance of Certain Practices	33
<u>PART II - MECHANICAL RUBBER GOODS</u>	34
Chapter 1 - Introduction	35
Chapter 2 - Description of the Product	36
Chapter 3 - Sources of Supply	38
Chapter 4 - Distribution	42
Chapter 5 - The Work Sheet System	45
Chapter 6 - Prices	52
Chapter 7 - Trade Lists and Discounts	64
Chapter 8 - Tenders	76
Chapter 9 - Shipping Charges	86
Chapter 10 - Conditions of Sale	92
Chapter 11 - Incidental Restrictions Supporting Price Structure	96
A. Range and Specifications	96
B. Distribution	106
Chapter 12 - Resale Price Maintenance	110
Chapter 13 - Branch Meetings	116
Chapter 14 - Special Products	124
A. V Belting	124
(a) Multiple V Belts	124
(b) Fractional Horsepower Belts	129
B. Garden Hose	136
Chapter 15 - Post-War Planning	148
Chapter 16 - Confidential Nature of the Arrangements	156
Chapter 17 - Imports	168
Chapter 18 - Exports	176
Chapter 19 - Oral Evidence	181

	<u>Page</u>
<u>PART III - RUBBER TIRES AND TUBES</u>	192
Chapter 1 - The Tire and Tube Industry	193
A. Scope of the Report	193
B. Growth of the Industry	194
C. Description of the Products	195
D. The Tire Companies	197
E. Special or Private Brands	199
F. Imports	200
G. Exports	201
H. Distribution and Price Systems in the Tire Industry	202
Chapter 2 - The Rubber Association of Canada	205
A. Membership of the Tire Companies in the Association	205
B. Meetings of the Tire Division and Functions of the Secretary	205
Chapter 3 - Wartime Controls on Tires and Tubes	207
Chapter 4 - Industry Agreements and Arrangements Relating to Replacement Tires and Tubes	209
A. General	209
B. List Prices	210
(a) Passenger, Bus and Truck Tires and Tubes	210
(b) Implement and Tractor Tires and Tubes	226
C. Pricing Procedures	229
(a) The Replacement Tire Pricing Committee	229
(b) Groupings and Combinations	231
(c) New or Special Types of Tires and Tubes	236
(d) Imported Tires and Tubes	244
D. Terms to Dealers	251
(a) General	251
(b) Sales and Shipping Terms	251
(c) Bonuses and Other Allowances	262
E. Agreements on Prices to Governments and other Large Consumers	275
(a) General	275
(b) Prices to Governments and Railways	275
(c) Passenger Transportation Bus Companies	286
F. Agreements on Warranties and Adjustments	292
G. Branch Meetings	299
Chapter 5 - Industry Agreements and Arrangements Relating to Original Equipment Tires and Tubes	307
A. General	307
B. Nature of Arrangements	309
C. Prices for Original Equipment Tires and Tubes	309
(a) Prior to December 1941	309
(b) After December 1941	319
D. Arrangements Respecting Terms of Sale of Original Equipment Tires and Tubes	326
E. Arrangements Respecting Classified Lists of Vehicle Manufacturers	330
F. Implement List	342
Chapter 6 - Oral Evidence and General Comments	347

	<u>Page</u>
<u>PART IV - ACCESSORIES AND REPAIR MATERIALS</u>	356
Chapter 1 - Introduction	357
A. Description of the Products	357
B. Sources of Supply	358
C. Wartime Controls	362
Chapter 2 - Price and Other Arrangements Relating to Accessories and Repair Materials	363
A. General	363
B. Period Before December 1941	363
C. Period After December 1941	387
Chapter 3 - Oral Evidence Generally	414
<u>PART V - RUBBER FOOTWEAR</u>	426
Chapter 1 - Introduction	427
A. The Rubber Footwear Industry	427
B. Members of the Association	427
C. Non-Member Manufacturers in Canada	428
D. Association Activities	429
E. Production, Distribution and Pricing	429
(a) Production	429
(b) Distribution	430
(c) Pricing	430
Chapter 2 - The Period before Wartime Controls	432
A. The Hardy & Badden Agreement	432
B. The New Discount Structure	432
C. Break-up of the Agreement	433
D. Financial Effects of the Agreements	434
E. Period Following Dissolution of Hardy & Badden Agreement	435
F. Agreements on the Eve of Controls	437
Chapter 3 - The Period During and After Controls	444
A. Wartime Controls	444
B. Post-War Planning	447
C. Implementation of the Post-War Plan	451
D. Oral Evidence	455
E. Post-Control List Prices	455
(a) Prices on Decontrol	455
(b) Canvas Prices for 1948	458
(c) Waterproof Prices for 1948	459
(d) Price Increases in 1948	463
(f) Oral Evidence re List Prices	464
F. Discounts	466
(a) Classified Accounts	466
(b) Kaufman Conforms with Industry List	468
(c) Bata Adopts the Discount Structure	470
(d) Maintenance of the List	471
(e) Statistical Evidence of Volume Discounts	472
(f) Oral Evidence	472
(g) Effects of the Discount Structure	475
(h) Significance of Agreement on Classified Lists	478
G. Standard Range	478
(a) Waterproof Range 1947	478
(b) 1948 Canvas Range	478

	<u>Page</u>
(c) Waterproof Range for 1948	481
(d) Canvas Range for 1949	483
(e) Oral Evidence as to Agreements on Range	484
H. Jobbers	487
I. Terms of Sale including Transportation Charges	492
J. Expurgation of Footwear Minutes	497
(a) Footwear Manufacturers' Meeting of April 10, 1947	497
(b) The Meeting of May 8, 1947	497
K. Oral Evidence - General	500
L. Bata and British	502
(a) Bata	503
(b) British	503
M. Review of Post-Control Evidence	505
N. Comment	514
 <u>PART VI - HEELS AND SOLES</u>	 515
Chapter 1 - Introduction	516
A. Scope of the Report	516
B. Products Manufactured	516
C. Companies in the Industry	516
D. Production, Imports and Exports	518
E. Channels of Distribution	520
F. Organization of the Heel and Sole Group	520
Chapter 2 - The Pre-Control Period	522
A. General	522
B. Arrangements Relating to Shoe Manufacturers	523
(a) Prices	523
(b) Oral Evidence	525
(c) Degree of Adherence	528
C. Arrangements Relating to the Shoe Findings Trade	533
(a) Prices and Customer Classification	533
(b) Jobbers' Lists	540
(c) Oral Evidence and Degree of Adherence	541
D. Prices to Government Departments and Institutions	542
E. Range	543
F. Other Agreements	546
Chapter 3 - The Wartime Control Period	549
A. Controls	549
B. Agreements during Controls	550
(a) Prices	550
(b) Tenders	551
(c) Jobbers and Discounts	556
(d) Post-War Planning	559
Chapter 4 - The Post-Control Period	564
A. General	564
B. Prices	565
(a) Prices to Shoe Manufacturers	565
(b) Prices to Jobbers	575
C. Discounts to the Shoe Findings Trade	578
D. Recognition as Jobbers	578
E. Range	588

	<u>Page</u>
<u>PART VII - VULCANIZED RUBBER CLOTHING</u>	592
Chapter 1 - Introduction	593
A. Products Manufactured	593
B. Companies Involved in the Investigation	593
C. Volume of the Market and Miner Leadership	594
D. Methods of Distribution	595
E. Other Products	595
F. Imports	597
G. Wartime Controls	597
Chapter 2 - Price Arrangements	600
A. The Rubber Association and the Vulcanized Rubber Clothing Group	600
B. Exhibit 197	600
C. List Prices	608
D. Discounts and Terms	618
(a) Discounts	618
(b) Terms	623
E. Customer Classification	623
F. Freight Charges	636
G. Tenders	637
Chapter 3 - Maintenance of Agreements	642
A. Resale Price Maintenance	642
B. Surveillance	648
C. Oral Evidence Generally	651
<u>PART VIII - CONCLUSIONS</u>	656
Chapter 1 - Introduction	657
A. Documentary Evidence	657
B. Oral Evidence	657
Chapter 2 - Defences Raised in Arguments	660
A. Wartime Considerations	660
B. Control of the Market	663
C. Mortality Among the Companies	663
D. Efficiency of the Industry	664
E. Effect of Strong Demand and Short Supply	666
Chapter 3 - Proposals to Discuss Industry Arrangements with the Combines Investigation Commission	668
Chapter 4 - Polymer Corporation Limited	672
Chapter 5 - Summary and Conclusions	679
A. General	679
B. Detriment to the Public	682
C. The Mechanical Group	684
D. The Tire Group	686
E. The Accessory Group	690
F. The Footwear Group	691
G. The Heels and Soles Group	693
H. The Clothing Group	695
<u>APPENDICES</u>	697
A. Main Classes of Products in the Work Sheets	698
B. Schedule B of the Brief of the Rubber Association of Canada, being Entries and Exits by Companies, in the Canadian Rubber Industry	704
C. List of Manufacturers of Rubber Products Reporting to the Dominion Bureau of Statistics in 1948	709

PART I - INTRODUCTION

Chapter 1 - General Information

A. Purpose of the Part

The purpose of this Part of the Report is to set out certain general background information relating to the rubber industry, and certain evidence which is relevant to more than one branch thereof, and which is necessary or useful in appraising the detailed evidence contained in the Parts relating to the individual branches of the industry. Most of the oral and documentary evidence was collected prior to the end of 1949 and, except where the context otherwise indicates, general statements should be read as being applicable to that time.

B. Products

This Report covers what were in effect six different inquiries into as many branches of the rubber industry and each branch is dealt with separately in the succeeding Parts as follows:

Part II - Mechanical rubber goods, which comprises hose, belting and miscellaneous industrial products such as rubber packing.

Part III - Rubber casings (tires) and rubber inner tubes (tubes) for use on passenger cars, buses, trucks, industrial and farming equipment.

Part IV - Car accessories and repair materials comprising an extensive line of rubber goods used in the automotive trade including in the case of accessories: fan belts, airline hose, radiator hose, car heater hose, car washer hose, mats, tubing and white sidewall paint; and in the case of repair materials: camelback, various types of patches, gums and cements, repair kits, stripping, tire reliners, flaps and air bags.

Part V - Rubber footwear comprising rubbers, all-rubber boots, rubber bottoms with leather tops, overshoes, and rubber soled footwear with canvas or other fabric tops.

Part VI - Rubber heels and soles and slab soling.

Part VII - Vulcanized rubber clothing made chiefly for occupational use by miners, policemen, fishermen, postmen, firemen, farmers, cartage men and construction men.

C. Parties

The principal parties whose activities were inquired into are listed below. All, however, were not concerned in every one of the six inquiries, nor are all reported against in this Report. The parties concerned in each inquiry are indicated in the Part of this Report relating to that inquiry.

The Acton Rubber Limited (hereinafter referred to as "Acton").

The head office of the Company is located at Acton Vale in Bagot County, P.Q. It was incorporated under the Quebec Companies Act by letters patent dated February 8, 1937 to acquire the assets of a predecessor company, The Acton Rubber Company Limited. Acton is a wholly owned subsidiary of Alfred Lambert Incorporated. The Company manufactures rubber and canvas footwear and sells its entire output to Alfred Lambert Incorporated. It has been a member of The Rubber Association of Canada since 1944.

Alfred Lambert Incorporated (hereinafter referred to as "Alfred Lambert").

The present Company, with its head office in Montreal, was incorporated on February 8, 1937 under the Quebec Companies Act for the purpose of acquiring the business of Alfred Lambert Limited. It buys and distributes the entire production of Acton. It has never been a member of The Rubber Association of Canada.

Barringham Rubber & Plastics Limited (hereinafter referred to as "Barringham").

The Company was originally incorporated under the name of Barringham Rubber Company Limited as an Ontario company on December 30, 1938. The name was changed to the present one in 1946. The head office of the Company is in Oakville, Ontario. Barringham manufactures mechanical rubber goods, tire repair materials, rubber sheeting and fabrics, and plastic products. During part of the period covered by this Report, it also manufactured vulcanized rubber clothing. It has been a member of The Rubber Association of Canada since 1942.

Bata Shoe Company of Canada Limited (hereinafter referred to as "Bata").

The head office of the Company is in Batawa, Ontario. It was incorporated as a Dominion company on February 8, 1938 under the name of Bata Import & Export Company Limited. The name was changed to the present one by supplementary letters patent dated September 9, 1939. Originally carrying on business as an import and export company dealing in footwear, Bata began manufacturing operations about the fall of 1939. It has never been a member of The Rubber Association of Canada.

The British Rubber Company of Canada Limited (hereinafter referred to as "British").

The head office of the Company was located in Montreal. It was incorporated as a Quebec company on March 5, 1935. On December 31, 1944 British acquired most of the properties and assets of The British Tire Company of Canada Limited, which from the time

of its incorporation in 1935 had manufactured for various periods tires, repair materials, rubber footwear, rubber heels and miscellaneous moulded rubber goods. By supplementary letters patent dated June 30, 1948 the name of British was changed to Mailman Corporation Limited. At the same time a subsidiary, The British Rubber Company Limited, was incorporated to act as sales agent for the Rubber Division of Mailman Corporation Limited. British, which was never a member of The Rubber Association of Canada, manufactured rubber footwear, some industrial rubber products and other rubber goods.

Cambridge Rubber, Ltd. (hereinafter referred to as "Cambridge").

The Company was incorporated on August 27, 1935 under the laws of the Dominion of Canada with head office in St. Remi de Napierville, P. Q. Until April 30, 1946 it was a wholly owned subsidiary of Cambridge Rubber Company, a Massachusetts corporation, and since that time of the successor company, The Cambridge Rubber Company, a Maryland corporation. The Company manufactures rubber footwear and has been a member of The Rubber Association of Canada since 1944.⁽¹⁾

Canadian Allis-Chalmers Limited (hereinafter referred to as "Canadian Allis-Chalmers").

The Company was incorporated by Federal letters patent dated April 18, 1913 with head office in Toronto to take over the property, liquid assets and goodwill of Allis-Chalmers-Bullock, Limited which had been formed in 1903. It is a wholly owned subsidiary of Canadian General Electric Company Limited. It has engaged in the business of manufacturing hydraulic turbines, mining and paper making machinery, mechanical drives and other mechanical devices. The Company has never been a member of The Rubber Association of Canada.⁽²⁾

Canadian General-Tower Limited (hereinafter referred to as "Canadian General-Tower").

The Company was originally incorporated in 1923 as Transparent & Mechanical Rubber Company Limited with head office in Toronto. In 1925, the name was changed to The Canadian General Rubber Company Limited, and in 1927 the head office was officially changed to Galt, Ontario. In August 1938, The Canadian General

-
- (1) The manufacturing facilities and assets of Cambridge Rubber, Ltd. have been acquired by the Mailman Corporation Limited, according to a news report in the Ottawa Journal of October 12, 1951 and the Standard Corporation Records report of January 14, 1952.
 - (2) As of February 1, 1951 all physical assets and undertaking of Canadian Allis-Chalmers Limited were sold to a new company, Canadian Allis-Chalmers (1951) Limited with head office in Montreal. The new company is a wholly owned subsidiary of Allis-Chalmers Manufacturing Company of Milwaukee, Wisconsin. The name of Canadian Allis-Chalmers Limited was changed on July 6, 1951 to Canalco Limited.

Rubber Company Limited purchased all of the outstanding capital stock of Tower Canadian Limited, a manufacturer of heavy duty protective clothing, which had been incorporated in 1902. Canadian General-Tower was incorporated as an Ontario company on August 1, 1946 amalgamating The Canadian General Rubber Company Limited and Tower Canadian Limited. It produces vulcanized rubber and oiled clothing, drug and hospital supplies and other rubber products, but its main business at the present time is in the field of plastic goods. For a part of the period covered by this Report, The Canadian General Rubber Company Limited manufactured rubber heels and soles. Canadian General-Tower, or its predecessor, The Canadian General Rubber Company Limited, has been a member of The Rubber Association of Canada since 1931.

Dominion Rubber Company, Limited (hereinafter referred to as "Dominion").

The Company was originally incorporated under the laws of the Dominion of Canada by letters patent dated June 29, 1906 as Canadian Consolidated Rubber Company (Limited) with head office in Montreal. It was formed as a holding company to take over Canadian Rubber Company of Montreal Ltd. and Granby Rubber Company Limited. In 1906, it acquired Maple Leaf Rubber Company Ltd. of Port Dalhousie, Ontario. In the year 1907, it acquired three more companies, Commercial Rubber Company Limited, St. Jerome, P.Q., Berlin Rubber Mfg. Co. Ltd., Kitchener, Ontario, and Merchants Rubber Co., Kitchener. In the same year working control of Canadian Consolidated Rubber Company (Limited) passed through stock purchases to United States Rubber Company with head office in New York City and in 1911, this became a majority stock control. In 1912, Canadian Consolidated Rubber Company (Limited) acquired Dominion Tire Company Ltd., Kitchener, in 1915 Rubber Regenerating Co. of Canada Ltd., Montreal, and The Walpole Rubber Co. Ltd., Granby, in 1916 Columbus Rubber Co. of Mtl. Ltd., Montreal, and in 1918, Dominion Belting Co. Ltd., Hamilton. The Ames Holden McCready Co. Ltd., of Montreal was liquidated and certain of its assets were acquired in 1925 by Canadian Consolidated Rubber Company (Limited). The name was changed to Dominion Rubber Company, Limited by supplementary letters patent dated May 11, 1926. After 1930, Dominion acquired Provincial Tire Corp'n Ltd., of Hamilton. In 1933 it purchased the assets of Independent Rubber Co. Ltd. in bankruptcy. Dominion acquired The Woodstock Rubber Company Limited, Woodstock, Ontario in 1936. It acquired A. E. Charron Ltd., Montreal in 1937 and acquired the assets only of Canadian Consolidated Felt Co. Ltd. in 1940. In 1941, it acquired The Northern Rubber Company Limited in Guelph. United States Rubber Company had been buying further stock in Dominion over a period of years and about 1942 became the beneficial owner of 100 per cent of the issued capital stock. Subsidiary companies connected with the rubber industry which are owned by Dominion and are presently operating are Northern-Woodstock Rubber Limited, Toronto, and Provincial Tire Company, Toronto. Dominion manufactures rubber

footwear, tires and tubes, accessories and repair materials, mechanical rubber goods and various chemicals and, for a part of the period covered by this Report, it manufactured rubber heels and soles. The Company or its predecessor has been a member of The Rubber Association of Canada since 1920.

Dunlop Tire and Rubber Goods Company Limited (hereinafter referred to as "Dunlop").

The head office of the Company is in Toronto. It was originally incorporated as The Dunlop Tire Company Limited under the laws of the Province of Ontario by letters patent dated February 28, 1899. It was formed to acquire the business being carried on in Canada by The American Dunlop Tire Company. In 1905, the name was changed to Dunlop Tire and Rubber Goods Company Limited. Control of Dunlop was acquired in 1928 by Dunlop Rubber Company Limited of London, England, which by 1947 owned all the outstanding common stock of the Company. Dunlop manufactures tires and tubes, accessories and repair materials, mechanical rubber goods and other rubber products. Dunlop has been a member of The Rubber Association of Canada for many years, although it withdrew for a period around 1936.

Firestone Tire & Rubber Company of Canada Limited (hereinafter referred to as "Firestone").

The Company, with head office in Hamilton, was incorporated under the laws of the Dominion of Canada by letters patent dated November 10, 1919. It is a wholly owned subsidiary of Firestone Tire and Rubber Company in Akron, Ohio. In 1934, Firestone acquired Forbes Bros. Limited in Halifax, and in 1935 it acquired Automotive Equipment Limited in Montreal, which were operated thereafter as Company branches under new names. In 1936, Firestone Textiles Limited, a wholly owned subsidiary of Firestone with head office in Woodstock, was set up, and in 1944 another wholly owned subsidiary, Firestone Stores Limited, with head office in Hamilton, was incorporated. Firestone produces tires and tubes, accessories and repair materials, home and auto supplies and industrial rubber products. It has been a member of The Rubber Association of Canada continuously since 1920.

The General Tire & Rubber Company of Canada Limited (hereinafter referred to as "General").

The Company was incorporated on January 3, 1934 under the Dominion Companies Act, with head office in Toronto. Its parent company is The General Tire & Rubber Company in Akron, Ohio. General does no manufacturing but sells tires, tubes and accessories. It became a member of The Rubber Association of Canada in 1934, withdrew for a

period around 1936 and rejoined in 1942, since (1) it has continuously been a member of the Association.

The B. F. Goodrich Rubber Company of Canada Limited (hereinafter referred to as "Goodrich").

The head office of the Company is located in Kitchener. The undertaking was originally incorporated as Ames Holden Tire Company Limited in 1919. In 1922, it was reorganized and its assets transferred to a new company, Ames Holden Tire & Rubber Company, Limited, incorporated under the Dominion Companies Act by letters patent dated December 14, 1922. Early in 1923, The B. F. Goodrich Company, Akron, Ohio entered into a manufacturing arrangement with the new company and acquired the controlling interest in it early in 1925. The name of the Company was changed by supplementary letters patent dated April 20, 1925 to Canadian Goodrich Company Limited. The name was again changed by supplementary letters patent dated April 20, 1936 to the one presently used. Goodrich manufactures and sells tires and tubes, rubber footwear, industrial rubber products and automotive accessories and repair materials. Goodrich, or a predecessor, has been continuously a member since joining The Rubber Association of Canada in 1925.

The Goodyear Tire & Rubber Company of Canada, Limited (hereinafter referred to as "Goodyear").

The head office of the Company is in New Toronto, Ontario. The undertaking was originally incorporated under the laws of the Dominion of Canada in 1910, and was subsequently reincorporated as an Ontario company under the same name in 1919. In April 1926, it purchased all the common stock of Goodyear Cotton Co. of Canada, Limited, St. Hyacinthe, P.Q., a company which had been formed for the purpose of buying and operating the mill formerly known as the Canadian Manhasset Cotton Co. The present Company was incorporated under the laws of the Province of Ontario to take over all the assets of the 1919 company on March 30, 1927. The Company has always been controlled by The Goodyear Tire & Rubber Company in Akron, Ohio, which presently owns more than 75 per cent of the issued capital stock. Goodyear manufactures tires and tubes, mechanical rubber goods, accessories and repair materials and heels and soles. Goodyear, or a predecessor, has been a member of The Rubber Association of Canada since 1920.

(1) Purchase of Joseph Stokes Rubber Company Limited, Welland, Ontario by General was reported in the August 11, 1951 issue of the Financial Post. This is the only large rubber manufacturing company in Canada not mentioned in this enumeration.

G. L. Griffith & Sons Ltd. (hereinafter referred to as "Griffith").

Griffith was incorporated as a Dominion company on June 1, 1920 to take over a partnership which had been engaged in the business of harness manufacturing. Griffith did not enter the rubber field until 1928 when it purchased a small rubber company, Federal Manufacturing Company, and moved it from Wingham to Stratford, the head office of the Company. Griffith manufactures in addition to leather goods, household rubber products, rubber soles, mechanical rubber goods and other rubber products. Griffith joined The Rubber Association of Canada in June 1945.

Gutta Percha & Rubber, Limited (hereinafter referred to as "Gutta Percha").

The head office and plant of Gutta Percha are in Toronto. The original factory was built in 1883, and the business was started as a branch of The Gutta Percha & Rubber Manufacturing Co. in New York. It was reorganized as The Gutta Percha & Rubber Manufacturing Co. of Toronto, Limited, incorporated February 26, 1887, with controlling interest held in Canada. The present Company was incorporated under the laws of the Dominion of Canada by letters patent dated March 18, 1924 to take over the assets and undertaking of the predecessor company and its subsidiaries. Gutta Percha presently owns and operates only one subsidiary: Gutta Percha & Rubber (London) Limited, incorporated July 7, 1925, a sales company with head office in London, England. The Company produces rubber footwear, accessories and repair materials and industrial and mechanical rubber goods and, during the period covered by this Report, it produced tires and tubes and, for a part of such period, it produced rubber heels and soles. Gutta Percha or its predecessor has been a member of The Rubber Association of Canada since 1920. ⁽¹⁾

The Holtite Rubber Company of Canada, Ltd. (hereinafter referred to as "Holtite").

The Company was incorporated under the Dominion Companies Act on February 7, 1930 with head office in Drummondville, P.Q. Control of the Company is held by American interests including Holtite Manufacturing Company, of Baltimore, Maryland. Holtite manufactures heels and soles and has been a member of The Rubber Association of Canada since 1935.

-
- (1) Control of the Company has been held by the estate and family of the late H. E. Warren, but according to a report in the Financial Post, June 24, 1950 issue, Gutta Percha has been purchased by Combined Enterprises Holdings Ltd. - a Canadian company.

Kaufman Rubber Company Limited (hereinafter referred to as "Kaufman").
Kaufman Rubber (Ontario) Limited.

The head offices of both Companies are in Kitchener, Ontario. The business was originally incorporated as The Kaufman Rubber Company Limited in 1908. Beginning in 1924 and continuing until 1930, operations of the enterprise were carried on by two companies, The Kaufman Rubber Company (Ontario) Limited doing the manufacturing, and The Kaufman Rubber Company Limited, the selling. From 1930 to March 1932, all operations were again carried on by one company, being the latter named above. On March 1, 1932 two new companies were created, Kaufman Rubber Company Limited, incorporated under the laws of the Dominion of Canada to sell the products of Kaufman Rubber Company (Ontario) Limited, the manufacturing company. On March 1, 1941, the latter company was wound up and its assets purchased by Kaufman Rubber (Ontario) Limited, incorporated under the laws of the Province of Ontario by letters patent dated March 20, 1941. Ownership of both Companies is in the hands of the Kaufman family. Products of the enterprise are rubber footwear, vulcanized rubber clothing and some industrial rubber goods. Kaufman Rubber Company Limited only has been a member of The Rubber Association of Canada since 1935.

The Miner Rubber Company Limited (hereinafter referred to as "Miner").

The Company, with head office in Granby, P.Q., was incorporated under the laws of the Dominion of Canada on May 27, 1909. The controlling interest is held by William H. Miner. A subsidiary, Miner Rubber (London) Limited, a British company, was incorporated to handle orders for export to the United Kingdom on October 22, 1932. Miner manufactures rubber footwear, vulcanized rubber clothing, heels and soles and other rubber products. Miner has been a member of The Rubber Association of Canada since 1920.

Northern-Woodstock Rubber Limited (hereinafter referred to as "Northern-Woodstock").

The head office of the Company is located in Toronto. It was originally incorporated by letters patent of the Province of Ontario dated January 11, 1939 as Woodstock Rubber Company Limited to take over as a going concern the undertaking, assets and liabilities of The Woodstock Rubber Company Limited incorporated in 1926. The name was changed to the present one by supplementary letters patent dated April 30, 1942 when the Company purchased the assets of The Northern Rubber Company Limited from Dominion. The Company is a subsidiary of Dominion from whom it buys rubber footwear for resale. Northern-Woodstock does not carry on any manufacturing operations. Northern-Woodstock is not a member of The Rubber Association of Canada.

Panther Rubber Co. Ltd. (hereinafter referred to as "Panther").

The head office of the Company is in Sherbrooke, P.Q. It was incorporated under the Dominion Companies Act on September 15, 1916 to take over as a going concern the property and assets in Canada of Panther Rubber Manufacturing Company of Stoughton, Massachusetts. In 1943, through stock transfers from individual American shareholders, Panther-Panco Rubber Company, Chelsea, Massachusetts acquired control of the majority of the stock. The Company produces heels and soles, household and other rubber products. It has been a member of The Rubber Association of Canada since 1927.

The Rubber Association of Canada (hereinafter referred to as "the Association").

The present offices of the Association are located in the Commerce and Transportation Building at 159 Bay Street in Toronto, Ontario. It was incorporated under the Dominion Companies Act on March 17, 1920. The Association has three classes of members - firm members, affiliate members and associate members, besides honorary members. In 1948 the following corporations were firm members:

The Acton Rubber Limited
Barringham Rubber & Plastics Limited
Cambridge Rubber, Ltd.
Canadian General-Tower Limited
Dominion Rubber Company, Limited
Dunlop Tire and Rubber Goods Company Limited
Firestone Tire & Rubber Company of Canada Limited
The General Tire & Rubber Company of Canada Limited
The B. F. Goodrich Rubber Company of Canada Limited
The Goodyear Tire & Rubber Company of Canada, Limited
G. L. Griffith & Sons Ltd.
Gutta Percha & Rubber, Limited
The Holtite Rubber Company of Canada, Ltd.
Kaufman Rubber Company Limited
The Miner Rubber Company Limited
Panther Rubber Co. Ltd.
St. Lawrence Rubber Company Ltd. (a joint membership with
its affiliate American Wringer Company of Canada Limited)
Seiberling Rubber Company of Canada, Limited
Stedfast Rubber Company (Canada) Limited
Joseph Stokes Rubber Company Limited
Viceroy Manufacturing Company Limited

There were nine affiliate members, a class for which firms, corporations or individuals engaged in the manufacturing of materials or supplies which may be used by the rubber industry, are eligible. In 1948 there were also 21 associate members who were individuals connected with corporations which were firm

or affiliate members. There is no capital stock in the Association which is a non-profit making organization. Expenses are in part defrayed by an entrance fee of \$25. for each firm and affiliate member and by annual dues of \$50. for firm members, \$25. for affiliate members and \$5. for associate members. These revenues, however, do not begin to meet the expenses of the Association which are paid for primarily by a voluntary levy based on volume of receipts of rubber by firm members. Officers and directors of the Association, with one exception, are all senior officials of one or other of the corporations which are firm members. The position of Manager and Secretary of the Association and of Assistant Treasurer has been held by G. B. Smith since June 1, 1944. Mr. Smith joined the Association on October 1, 1943 as an assistant to A. B. Hannay who had been Manager and Secretary since the formation of the Association. On Mr. Hannay's retirement, Mr. Smith assumed his position. From October 22, 1945 A. U. Oakie has acted as Assistant to the Manager and Secretary of the Association, which has several other salaried employees.

Seiberling Rubber Company of Canada, Limited (hereinafter referred to as "Seiberling").

A wholly owned subsidiary of Seiberling Rubber Company in Akron, Ohio, the Company was incorporated under the laws of the Dominion of Canada by letters patent dated March 24, 1927 with head office in Toronto. Originally designed as a sales organization, Seiberling entered an agreement in 1927 to purchase the entire production of K & S Rubber Company Limited. It secured control of this company in 1928. The assets and undertaking of K & S Rubber Company Limited were purchased by Seiberling in 1933 and the former company wound up. Seiberling manufactures tires and tubes, drug sundries and other rubber goods. It has been a member of The Rubber Association of Canada since shortly after the Company was incorporated.

Viceroy Manufacturing Company Limited (hereinafter referred to as "Viceroy").

The head office of the Company is in Toronto. The original enterprise was established under the name of I.T.S. Rubber Company of Canada, Limited in August 1918, which was changed to Canadian I.T.S. Rubber Company Limited in January 1920. At that time, controlling interest in the enterprise was held by residents of the United States, although control is now exercised by Canadian interests. The present Company was incorporated under the laws of the Dominion of Canada on August 29, 1930. Viceroy manufactures a wide variety of rubber products including some mechanical rubber goods, drug sundries and household rubber goods. During a part of the period covered by this Report it manufactured rubber heels and soles. The Company or its predecessor has been a member of The Rubber Association of Canada since 1924.

D. Historical

The two following paragraphs have been adopted from the Brief presented to the Commission by The Rubber Association of Canada.

"Rubber manufacturing in Canada began in the 1880's when fire hose, garden hose, packing, bicycle tires and other articles of industrial or domestic use were produced. The principal production of rubber goods before the beginning of the 20th century was in the field of what is now known as mechanical goods and, judged by to-day's standards, was conducted on a minor scale. It was not until after the advent of motor car manufacturing in Canada, between 1904 and 1907, that the pneumatic automobile tires, now the largest section of the industry, were first produced. Motor car manufacturing attracted in its train the entry into Canada of many United States rubber manufacturers and, by 1910, the rubber industry was ready to drive forward in Canada, with its greatest progress being in tires rather than mechanical goods."

"Tires and Tubes

During the early days of tire and tube manufacturing, there was a high rate of mortality among the producers which can be attributed to the speed of technological improvements in both the tire and motor car industries; the fluid conditions of marketing methods in a new industry; and, tragically in the 1920's, the wild fluctuations in the market price of crude rubber. Finally, in the 1930's only some twenty major companies which could be considered principal tire manufacturers remained in the world. Most of these companies had their head offices in the United States, and Akron, Ohio, came to be known as the rubber capital of the world. Seven of the largest tire companies have Canadian subsidiaries as follows:

Producers

The Goodyear Tire & Rubber Company
of Canada, Limited

Dominion Rubber Co. Ltd.

Dunlop Tire and Rubber Goods Co. Ltd.

The Firestone Tire & Rubber Co. of
Canada, Ltd.

The B. F. Goodrich Rubber Co. of
Canada Ltd.

Seiberling Rubber Co. of Canada Ltd."

Vendors Only--in Canada

General Tire & Rubber Co. of
Canada Ltd.

The Brief then states:

". . .

Until 1949 Gutta Percha & Rubber, Limited, a Company organized and owned by Canadians, also manufactured tires and tubes. This Company was among the first to manufacture tires in Canada and discontinued in spite of a good reputation for quality of product. . . .

. . ."

E. Period Covered by the Investigation

This investigation may be taken to have begun formally in September 1947, although what was perhaps the initial inquiry to any of the Companies went out in July 1947. The periods formally covered by the investigation are:

in respect of mechanical rubber goods, 1937 to 1948 inclusive;			
" " "	tires and tubes, 1937 to 1948 inclusive;		
" " "	car accessories and repair materials, 1937 to		
	1948 inclusive;		
" " "	rubber and canvas footwear, 1932 to 1948 inclusive;		
" " "	rubber heels and soles, 1936 to 1948 inclusive;		
" " "	vulcanized rubber clothing, 1938 to 1948 inclusive.		

Evidence relating to an earlier or later period has sometimes been considered however, where it appeared to have relevance by showing a continuous course of action or otherwise to the period proper. The conclusions are mostly drawn in respect of the time when the investigation commenced, namely September 1947, or later.

Chapter 2 - Statistical

A. Geographical Distribution of Rubber Plants

The rubber industry in Canada is concentrated mainly in the provinces of Quebec and Ontario; in fact all the major rubber manufacturing companies are located in these two provinces. From Table I, following, which shows the geographical distribution of the rubber plants of the companies chiefly concerned in this Report⁽¹⁾, it will be noted that the plants are practically all located in the Montreal and Eastern Townships area of Quebec and in the south-western portion of the province of Ontario. There are nine plants in Quebec and fourteen in Ontario. According to the Dominion Bureau of Statistics' report on the rubber industry for the year 1949, there were 62 establishments engaged in the manufacture of rubber tires, rubber footwear and other rubber goods in that year. Only seven of these establishments were located outside of Ontario and Quebec. To quote from the report:

" . . .

. . . This industry is practically confined to the Provinces of Ontario and Quebec. The plants in Ontario employed over 70 per cent of the persons engaged in the industry and produced over 81 per cent of the entire output, while over 29 per cent of total employment and over 18 per cent of production was in the Province of Quebec. . . .

. . ."

The greater portion of the industry is, by far, confined to the 23 plants mentioned in Table I, as will be noted from a review of the statistical data presented further on in this Chapter.

(1) The expression, "companies chiefly concerned in this Report", is used in this Chapter in the sense of the companies who are reported against and their affiliates and predecessors in business. The expression thus excludes, notably, British, Bata and Joseph Stokes Rubber Company Limited, whose operations are considerable. The first two are mentioned from time to time in Part V dealing with rubber footwear.

Table I

Geographical Distribution of the Rubber Plants of the
Companies Chiefly Concerned in this Report
1949

<u>Name of Company</u>	<u>Location of Plants</u>	<u>Number of Plants</u>	
		<u>Quebec</u>	<u>Ontario</u>
The Acton Rubber Limited	Acton Vale	1	-
Barringham Rubber & Plastics Limited	Oakville	-	1
Cambridge Rubber, Ltd.	St. Remi de Napierville	1	-
Canadian General-Tower Limited	Galt	-	1
Dominion Rubber Company, Limited	Montreal	2	-
Dominion Rubber Company, Limited	St. Jerome	1	-
Dominion Rubber Company, Limited	Kitchener	-	2
Dunlop Tire and Rubber Goods Company Limited	Toronto	-	1
Firestone Tire & Rubber Company of Canada Limited	Hamilton	-	1
The General Tire & Rubber Company of Canada Limited ⁽¹⁾		-	-
The B. F. Goodrich Rubber Company of Canada Limited	Kitchener	-	1
The Goodyear Tire & Rubber Company of Canada, Limited	Quebec	1	-
The Goodyear Tire & Rubber Company of Canada, Limited	Bowmanville	-	1
The Goodyear Tire & Rubber Company of Canada, Limited	New Toronto	-	1
Gutta Percha & Rubber, Limited	Toronto	-	1
G. L. Griffith & Sons Ltd.	Stratford	-	1
The Holtite Rubber Company of Canada, Ltd.	Drummondville	1	-
Kaufman Rubber (Ontario) Limited	Kitchener	-	1
Kaufman Rubber Company Limited ⁽²⁾		-	-
The Miner Rubber Company Limited	Granby	1	-
Northern-Woodstock Rubber Limited ⁽³⁾		-	-
Panther Rubber Co. Ltd.	Sherbrooke	1	-
Seiberling Rubber Company of Canada, Limited	Toronto	-	1
Viceroy Manufacturing Company Limited	Toronto	-	1
		<u>9</u>	<u>14</u>

(1) Products manufactured by Dunlop Tire and Rubber Goods Company Limited.

(2) Products manufactured by Kaufman Rubber (Ontario) Limited.

(3) Products manufactured by Dominion Rubber Company Limited.

B. Size of Manufacturers

The commanding position in the industry held by the companies chiefly concerned in this Report is evident from the data presented below with respect to the gross value of production, quantity of rubber consumed and the number of workers and staff employed.

(a) Selling Value of Products

In Table II following, the relationship of the selling value of the products of the companies chiefly concerned in this Report to the total selling value of all products produced by the rubber industry for the period 1939-1949 is shown. It will be noted that the selling value for such companies was over 91 per cent of the total selling value for the industry in each year, and over 93 per cent for the period.

Table II

Comparison of Total Selling Value of Products of Companies
Chiefly Concerned in this Report, with Total Selling Value
of Products of the Whole Rubber Industry
1939-1949

<u>Total Selling Value of all Products</u>			
<u>Year</u>	<u>Rubber Industry</u>	<u>Companies Chiefly Concerned in this Report</u>	<u>Per Cent - Such Companies of Total</u>
	\$,000	\$,000	
1939	69,945	65,613	93.8
1940	83,021	77,864	93.8
1941	119,138	112,762	94.6
1942	122,231	115,686	94.6
1943	130,158	123,209	94.7
1944	141,152(1)	135,496	96.0
1945	158,356(1)	150,335	94.9
1946	137,345(1)	125,750	91.6
1947	196,308	183,828	93.6
1948	194,112	180,181	92.8
1949	178,504	164,654	92.2

- (1) The total selling value of all products manufactured by the rubber industry, as reported by the Dominion Bureau of Statistics for each of the years 1944, 1945 and 1946, includes the value of synthetic rubber produced by the Polymer Corporation Limited. The figures for these years, as shown above, are exclusive of the Polymer figures.

(b) Consumption of Rubber

The quantity of rubber, natural, synthetic and reclaimed, used by the companies chiefly concerned in this Report in the period 1939-1949 as compared with the total consumption by the industry in the same period is shown in Table III. From the data presented in this table it is apparent that the companies chiefly concerned in this Report together account for approximately 95 per cent of the consumption of rubber by the rubber industry.

Table III

Comparison of the Consumption of Natural, Synthetic and Reclaimed Rubber by the Companies Chiefly Concerned in this Report with that Consumed by the Rubber Industry, 1939-1949

Consumption of Natural Rubber (including Latex)				Consumption of Synthetic Rubber				Consumption of Reclaimed Rubber			
Year	By the Industry	By the Companies Chiefly Concerned in this Report	Per Cent Such Companies of Industry	,000 lbs.	By the Industry	By the Companies Chiefly Concerned in this Report	Per Cent Such Companies of Industry	,000 lbs.	By the Industry	By the Companies Chiefly Concerned in this Report	Per Cent Such Companies of Industry
1939	73,187	70,320	96.1		-	-	-	16,83	15,308		90.9
1940	86,389	84,344	97.6		-	-	-	18,901	17,363		91.9
1941	128,096	122,949	96.0		-	-	-	21,195	19,358		91.3
1942	98,184	94,156	95.9		-	-	-	29,154	26,694		91.6
1943	65,831	65,155	99.0	9,037	8,960		99.1	29,104	26,596		91.4
1944	23,546	22,908	97.3	57,836	57,220		98.9	25,941	23,663		91.2
1945	16,378	15,459	94.4	79,528	78,273		98.4	31,668	29,128		92.0
1946	21,746	21,717	99.9	62,568	60,506		96.7	23,703	26,015		90.6
1947	71,556	67,414	94.2	61,559	60,629		98.5	34,637	31,889		92.1
1948	92,358	87,618	94.9	43,176	42,181		97.7	30,919	28,212		91.2
1949	85,374	80,381	94.2	37,062	33,236		89.7	26,761	24,241		90.6

Total Consumption			
Year	By the Industry	By the Companies Chiefly Concerned in this Report	Per Cent Such Companies of Industry
1939	90,025	85,628	95.1
1940	105,290	101,707	96.6
1941	149,291	142,307	95.3
1942	127,338	120,850	94.9
1943	103,972	100,711	96.9
1944	107,323	103,791	96.7
1945	127,574	122,860	96.3
1946	113,017	108,233	95.8
1947	167,752	159,932	95.3
1948	166,453	158,011	94.9
1949	149,197	137,868	92.4

(c) Number of Employees

Table IV following shows the average number of employees employed in the rubber industry and by the companies chiefly concerned in this Report for the period 1938-1949. It will be noted that over this period such companies account on the average for 90 per cent of the total employees of the industry.

Table IV

Comparison of Numbers of Employees of Companies Chiefly
Concerned in this Report with Numbers of Employees
in the Whole Rubber Industry
1938-1949

Year	<u>Average Number of Employees</u>		Per Cent Such Companies of Total for Industry
	Companies Chiefly Con- cerned in this Report	The Rubber Industry	
1938	11,446	12,879	88.9
1939	12,460	14,160	88.0
1940	12,772	14,297	89.3
1941	15,651	17,191	91.0
1942	14,353	15,497	92.6
1943	14,579	15,913	91.6
1944	17,910	19,521 ⁽¹⁾	91.7
1945	19,698	21,640 ⁽¹⁾	91.0
1946	17,930	20,199 ⁽¹⁾	88.8
1947	20,995	23,475	89.4
1948	19,184	21,703	88.4
1949	18,379	20,729	88.7

- (1) The average number of employees in the rubber industry as reported by the Dominion Bureau of Statistics for each of the years 1944, 1945 and 1946, includes the employees of the Polymer Corporation Limited. The employee figures for the industry for these years, as shown above, are exclusive of the Polymer employees.

C. Capital Investment

The total capital investment of each of the companies chiefly concerned in this Report is shown in Table V following for the years 1939 and 1947 as an approximate percentage of the total capital investment of all such companies, which, in those years, exceeded \$47,000,000 and \$80,000,000, respectively.

Table V

Relationship of the Capital Investment⁽¹⁾ in Each Company Chiefly Concerned in this Report with the Total Capital Investment in the Whole Group 1939 and 1947

Name of Company	Per Cent of Total Capital Investment	
	1939	1947
Dominion Rubber Company, Limited	21.5	25.3
The Goodyear Tire & Rubber Company of Canada Limited	30.3	24.7
Firestone Tire & Rubber Company of Canada Limited	11.2	8.9
Dunlop Tire and Rubber Goods Company Limited	8.7	7.1
The B. F. Goodrich Rubber Company of Canada Limited	6.0	6.8
Gutta Percha & Rubber, Limited	8.5	6.6
Kaufman Rubber (Ontario) Limited ⁽²⁾	2.0	3.3
The Miner Rubber Company Limited	4.5	3.2
Barringham Rubber & Plastics Limited	0.2	3.0
Seiberling Rubber Company of Canada, Limited	0.4	2.0
Canadian General-Tower Limited ⁽³⁾	-	2.0
Viceroy Manufacturing Company Limited	2.0	1.7
The Acton Rubber Limited	0.4	1.4
Kaufman Rubber Company Limited	0.3	1.1
G. L. Griffith & Sons Ltd.	0.6	0.6
Northern-Woodstock Rubber Limited ⁽⁴⁾	-	0.6
Panther Rubber Co. Ltd.	0.5	0.5
The Holtite Rubber Company of Canada, Ltd.	0.3	0.4
Cambridge Rubber, Ltd.	0.1	0.4
The General Tire & Rubber Company of Canada, Limited	0.2	0.4
Woodstock Rubber Company Limited ⁽⁴⁾	1.0	-
The Canadian General Rubber Company Limited ⁽³⁾	0.9	-
Tower Canadian Limited ⁽³⁾	0.4	-
	<u>100</u>	<u>100</u>

- (1) Includes borrowed capital.
- (2) The 1939 percentage refers to the predecessor company, Kaufman Rubber Company (Ontario) Limited.
- (3) The Canadian General Rubber Company Limited and Tower Canadian Limited were amalgamated in 1946 under the name of Canadian General-Tower Limited.
- (4) The name of Woodstock Rubber Company Limited was changed to Northern-Woodstock Rubber Limited in 1942 on acquiring the assets of The Northern Rubber Company Limited.

It is apparent from the data presented in this table that the leading Companies in the Group are Dominion, Goodyear, Firestone, Dunlop, Goodrich and Gutta Percha. In 1939, these Companies accounted for 86 per cent of the total capital investment in the Group, while in 1947 they accounted for approximately 80 per cent. The total capital investment for the Group in 1947 was about 1.7 times greater than in 1939.

Financial control of most of the more important firms is held by United States interests, as may be noted by reference to the table below. According to the report of the Dominion Bureau of Statistics on "United States Direct Investment in Canada", issued in 1949, investment by four American companies⁽¹⁾ in Canadian subsidiaries producing rubber products in 1946 amounted to \$36,540,000 out of a total investment of \$43,841,000, or 83.3 per cent. These subsidiary companies were principally, if not entirely, Dominion, Goodyear, Firestone and Goodrich.

Table VI

Canadian Rubber Companies Controlled by Canadian,
United States and British Interests
1948

<u>Name of Company</u>	<u>Canadian Controlled</u>	<u>United States Controlled</u>	<u>British Controlled</u>
The Acton Rubber Limited	x		
Barringham Rubber & Plastics Limited	x		
Cambridge Rubber, Ltd.		x	
Canadian General-Tower Limited	x		
Dominion Rubber Company, Limited		x	
Dunlop Tire and Rubber Goods Company Limited			x
Firestone Tire & Rubber Company of Canada Limited		x	
The General Tire & Rubber Company of Canada Limited		x	
The B. F. Goodrich Rubber Company of Canada Limited		x	
The Goodyear Tire & Rubber Company of Canada Limited		x	
G. L. Griffith & Sons Ltd.	x		
Gutta Percha Rubber, Limited	x		
The Holtite Rubber Company of Canada, Ltd.		x	
Kaufman Rubber Company Limited	x		
Kaufman Rubber (Ontario) Limited	x		
The Miner Rubber Company Limited	x		
Northern-Woodstock Rubber Limited		x	
Panther Rubber Co. Ltd.		x	
Seiberling Rubber Company of Canada, Limited		x	
Viceroy Manufacturing Company Limited	x		

(1) U.S. Rubber Co., Goodyear Tire & Rubber Co., Firestone Tire & Rubber Co., B. F. Goodrich Co.

D. Imports and Exports

Imports of rubber goods have formed a relatively small part of the total trade in such products in Canada, as may be noted by reference to Table VII below. In this table the value of imports and the value of exports of goods manufactured from rubber are compared with the gross value of all products produced by the rubber industry for the period 1938-1949. In 1938 and 1939 the value of imports was about 4 per cent of the total selling value of domestically produced rubber goods, while in the post-war years it has ranged around 6 per cent. It is of interest to note that the value of exports in relation to the value of domestic production declined in the war years and did not recover its previous relationship in the post-war period although exports increased in terms of dollar sales. One reason why exports were not greater in the post-war period than they actually were was no doubt the post-war exchange difficulties experienced by countries outside of the dollar area.

Table VII

Value of Imports and Exports of Rubber Goods as Compared
with the Selling Value of All Products Produced by the
Rubber Industry in Canada
1938-1949

Year	Total Selling Value of All Products	Total Value of Imports of Rubber Goods (1)	Total Value of Exports of Rubber Goods (2)	Per Cent Imports of Total Sel- ling Value of Produc- tion	Per Cent Exports of Total Sel- ling Value of Produc- tion
	\$	\$	\$	%	%
1938	61,030,710	2,544,153	14,827,687	4.2	24.3
1939	69,945,471	3,366,460	15,637,945	4.8	22.4
1940	83,020,721	10,049,082	12,781,690	12.1	15.4
1941	119,137,776	5,104,481	14,228,636	4.3	11.9
1942	122,231,402	3,379,050	11,492,326	2.8	9.4
1943	130,157,780	2,996,315	6,230,649	2.3	4.8
1944	141,152,354	3,657,228	18,719,305	2.6	13.3
1945	158,355,926	4,559,319	22,109,136	2.9	14.0
1946	137,344,598	10,916,809	14,324,243	7.9	10.4
1947	196,307,734	11,845,565	24,918,067	6.0	12.7
1948	194,111,934	11,178,271	24,363,735	5.8	12.6
1949	178,503,559	11,736,478	12,482,348	6.6	7.0

- (1) Increase in total value of imports for 1940 was due to heavy importations of pneumatic rubber tire casings and inner tubes. Increase in total value of imports, 1946-49, was due to increased importations of pneumatic rubber tire casings, inner tubes, raincoats, mats and matting, belting, rubber cement, rubber hose, gaskets and washers, druggists' sundries, boots and shoes, tire repair material, manufactures of rubber n.o.p. and flooring and tile of rubber.
- (2) Increased total exports in 1945 were due to increased exports of rubber belting, rubber hose, canvas shoes, boots and shoes and manufactures of rubber n.o.p. Increased total exports in 1947 and 1948 were due to increases in exports of rubber belting, canvas shoes, boots and shoes, tire casings and inner tubes.

Chapter 3 - Wartime Controls⁽¹⁾

In order for the reader to understand the lack of continuity of the evidence in the period after the beginning of the 2nd World War and to understand the arguments, hereinafter referred to, which were raised by the parties in respect of that period, it is necessary to describe at some length the control conditions that existed during part of it. Wartime controls affected the different branches of the industry in different ways and in varying degrees. Those controls that can conveniently be treated in a general Part will be described here and other aspects of peculiar application to a particular branch will be mentioned in the Part relating to that branch.

War was declared in September 1939 and rubber thereupon became a strategic material even though at that time the far eastern sources had not been cut off as they were to be later, upon the advent into the war of Japan.

A. Supply Control

In October 1940, Fairmont Company Limited, (hereinafter referred to as "Fairmont") a Crown corporation, began to stockpile rubber in cooperation with the industry. In August 1941 rubber was named a supply and placed under the Controller of Supplies and in the following month Fairmont was made the sole importer and distributor. In the same month the Controller obtained from the manufacturers of rubber products, through The Rubber Association of Canada, declarations of rubber consumption for the 12 months ending May 31, 1941. Consumption by each manufacturer for the production of civilian articles was thereupon restricted, for October 1941, to 90 per cent of the average monthly consumption in the basic year (June 1, 1940 to May 31, 1941) to be followed by an additional reduction of 5 per cent of such average in each succeeding month with the intention that by February 1942 the monthly consumption would be 70 per cent of such average. The attack upon Pearl Harbour in December 1941 made this programme inadequate because the source of supply of natural rubber was immediately cut off to the extent of about 90 per cent and Canadian manufacturers were forced to get along on the small stocks then at hand supplemented by very small supplies available from the territories still open to the Allies.

The manufacture of civilian goods from rubber was therefore stopped until January 1942. By January 1942 a list of essential civilian goods was prepared by the control authorities and each manufacturer was placed on a quota, based upon his declaration of manufacture in the basic period, for which he must secure a permit each month. Tire stocks were frozen until January 1942 by which time a list of essential services was prepared for which, only, new tires could be sold, and then only on signed

(1) The Commission is indebted for much assistance in the preparation of this Chapter to the evidence of Mr. J. A. Martin who, during part of the control period was Rubber Controller and Administrator, and who appeared as a witness before the Commission and supplied a number of helpful memoranda.

certificates. This was changed in May 1942 to a ration system. No passenger tires for civilian use were made in 1942 or the first part of 1943 except to finish tires in process of manufacture at the end of 1941. Civilian truck tire manufacture was limited to tires for essential services. This was placed on a quota basis. Rubber footwear production was placed on a quota basis and limited to types designed to supply protective footwear for those requiring it at work. At the request of the control authorities, a committee of rubber footwear manufacturers worked out a simplification of range which reduced the lines and genders being manufactured from about 360 to about 40 or 50, for the purpose of effecting the most economical use of inventories, labour and materials. All other articles for the manufacture of which rubber was allowed were similarly placed on quotas.

Conspicuous among the instruments by means of which the foregoing and other measures of rubber control were effected was an order issued in November 1941 which, generally speaking, restricted the amounts of rubber that could be used in manufacturing for certain purposes; an order issued in March 1942 prohibiting any person from starting to process rubber for civilian consumption except under permit; an order issued in March 1943 which provided that rubber could be obtained only on quota and could be used only on permit, and contained schedules specifying the products that could and could not be manufactured; and an order issued in August 1944, which continued basically in effect for the remainder of the control period and contained no schedules but provided that no products could be produced except those designated in writing by the Controller and then only from the amount, kind and type of rubber also so designated. Reclaim, scrap and synthetic rubber as well as crude rubber were brought under such controls.

Under orders of this kind the control authorities exercised constant supervision over the kinds and quantities of products that could be produced. They prescribed also the proportions of crude, reclaim and synthetic rubbers that could be used, and as synthetic became available in increasing quantities and crude came into better supply, they relaxed the restrictions on their use in such a manner as to ensure that they went into the products in which they were most needed.

In September 1941 a Rubber Advisory Committee was appointed by the Controller from the industry and it continued in existence until the end of rubber control at the beginning of April 1947. A Synthetic Rubber Technical Advisory Committee was established in 1942 composed apparently of persons engaged in research and in December of that year the Rubber Conservation and Technical Committee was also established. The purpose of the latter committee was to advise respecting the use of synthetic rubber in place of crude rubber, and sub-committees were established for each branch of the industry. This committee also continued to function until the end of controls.

Through these committees technical information leading to the most efficient use of materials and labour was frankly exchanged and this interchange of information was of particular significance with the introduction of general purpose synthetic rubber about the middle of

1943 because it made possible the adaptation of synthetic rubber and other ingredients to the manufacture of usable rubber articles in much shorter time than would otherwise have been the case. For example, this policy of cooperation among manufacturers in conjunction with the Army Engineering Branch made possible the development of dependable tires high in synthetic rubber content for the Armed Services in emergency time. Although no general purpose synthetic rubber had been made commercially on this continent prior to the war, it was possible through this cooperation of government and industry to construct a plant (Polymer Corporation Limited) and turn out a usable synthetic rubber within a period of about one and a half years from February 1942 when the idea was conceived. Cooperation among manufacturers in the exchange of information and "know-how" was also of particular significance in the rubber footwear industry.

The controls upon the use of the different kinds of rubber were raised progressively as the supply situation improved. Restrictions on scrap and reclaim rubber were first eased in December 1943 and by August 1944 restrictions upon the use of scrap and reclaim, and upon solid GR-S (Buna-S) which was used, for example, in tires, footwear and belting, were removed. Meanwhile the restrictions on certain other synthetics had been eased and by October 1945 neoprene, an imported synthetic used in certain types of hose, automotive parts, rubber thread and shoe cements and also Buna-S latex were freed as to restrictions upon use. Butyl synthetic, used chiefly in tubes, was not removed from restrictions until March 1946. All restrictions on the use of rubber came to an end at the beginning of April 1947.

B. Subsidies

In July 1943, in order to meet the trading losses necessarily incurred by Fairmont (later known as Polymer Sales & Service Limited) in maintaining stabilized prices, and to provide synthetic rubber at prices comparable to those established for crude, it became necessary for the Government to subsidize rubber, in respect of consumption for civilian use, through the medium of payments made to Fairmont by the Commodity Prices Stabilization Corporation Limited. As of August 1, 1944 this subsidy became chargeable to the manufacturers as an accountable advance, that is, each manufacturer was required to repay the subsidy out of any profits he might have in excess of 116-2/3 per cent of standard profits. Any profits in excess of such 116-2/3 per cent, which remained after repayment of the subsidy, were amenable to the excess profits tax for the time being in effect. The subsidy appears to have ranged from 21 cents per pound in the latter part of 1943 down to 1.4 cents per pound before it was removed entirely in October 1946. Other subsidies upon products used by the rubber industry applied to such commodities as leather, cotton and wool yarns, cotton sheeting, velveteen and carbon black.

C. Price Controls

As of December 1, 1941 the ceiling prices of all goods were, generally speaking, frozen at the highest prices in effect during the (basic) period September 15, 1941 to October 11, 1941. Such limitations

did not extend to sales to the Department of Munitions and Supply or any agency thereof, which sales were otherwise controlled. The price regulations not only placed ceilings over list prices but they also required the continuance of discounts and other conditions of sale as favourable as had been in effect during the basic period. Otherwise, of course, their purpose would have been largely defeated. The general effect was that basic period list prices could not be raised and basic period discounts could not be reduced.

Price controls as they affected rubber products came to an end by stages. In July 1946 an order was issued which suspended from price controls a large range of mechanical rubber goods while retaining controls on the other classes of rubber products dealt with in this Report. In January 1947 this suspension was extended to include garden hose. On April 2, 1947 the general price decontrol order came into effect suspending price controls on all rubber products with a small number of exceptions including tires and tubes for agricultural equipment and fan belts for internal combustion engines, which continued under control until September 1947.

D. Equitable Distribution

Complementary with the policy of price control went the policy of equitable distribution of goods in short supply. In some fields this policy took formal expression in rationing as in the case of tires from 1942 to 1946. It was never generally expressed in a formal order, however, but was set forth in a series of policy statements which were published in the Canada Gazette and later in Canadian War Orders and Regulations. In most fields voluntary compliance was secured without difficulty but where difficulty was encountered the policy was implemented by specific direction from an Administrator to the supplier. The policy of equitable distribution meant that where a dealer could not supply the full requirements of the trade he must allocate the available supply among his customers according to the proportions supplied them in the year 1941, provision being made by way of special directive for adjustments required by increases and shifts in population or any other special circumstances.

A statement of policy issued in September 1945 referred to three classes of goods: Group A which were released from any requirement of equitable distribution; Group B in respect of which suppliers could allocate 20 per cent of their supplies as they saw fit; and a residuary group being all other goods and remaining subject to the original equitable distribution policy. Group A included no rubber goods unless by interpretation some may have been included under such headings as construction equipment, electrical equipment and machine tools. Group B included waterproof clothing and the following items, which depending upon their interpretation, may have included rubber products - footwear, machinery and tools. In November 1945 rubber footwear was specifically added to Group B as was also the broad classification of "all rubber products". In January 1946 there were added to Group A rubber tires and tubes and all synthetic rubber except Butyl (GR-I). In February 1946 there were included in Group A all goods

on which ceiling prices were from time to time suspended. In January 1947 the policy was restated and revised to provide that only the goods listed in a schedule to the statement would be subject to the 80 per cent rule. Any goods not so listed could be distributed freely. Even with reference to the listed goods, they would become free upon ceasing to be in short supply or upon ceiling prices on any of them being suspended. An overriding directive might still issue from the control authorities. The only rubber goods listed were: footwear; waterproof clothing (except when designed for specialized industrial purposes); rubber sheets; rubberized fabrics; elastic yarns, fabrics and webbing; and plumbing equipment and household water-heating equipment. It would, therefore, appear that the following rubber goods were generally exempt from the policy by this time; heels and soles; tires and accessories; and most, if not all, classes of mechanical goods.

The policy of equitable distribution was supplemented by a series of orders, commencing with an order made in September 1942, prohibiting the establishment of any new business without a permit. A wholesaler thereafter could not newly engage in retailing without a permit, nor could a retailer newly engage in wholesaling. The net effect was to prevent a manufacturer or wholesaler from taking on a new customer unless such customer obtained a permit, and permits were difficult to obtain. The purpose of the order was to conserve materials and manpower and maintain a greater degree of stability for persons already engaged in trade and industry under the difficult conditions imposed by wartime requirements. In May 1944 the practice in respect of issuing permits was relaxed to permit the establishing of new businesses which would not interfere with the war effort, but a permit to establish a new business carried no guarantee of supplies, since the policy of equitable distribution as above described still governed. These orders went out of effect with price controls.

E. Export-Import Controls

By August 1941 the export, except under permit, was prohibited of all rubber products and, as supplies permitted, export quotas were set up on various lines for the industry. Export restrictions were gradually removed but were not finally abolished until the spring of 1947. The purpose of export restrictions was, of course, the conservation of rubber and they were relaxed as circumstances permitted so that Allies might be assisted and so that the position of Canadian companies in foreign markets would suffer no more than was necessary. Importation of all rubber and rubber products was prohibited, except under permit, by May 1942. The reason was in part that the rubber content of imported items was deducted from Canada's international allocation and in part that Canada had to refund the United States subsidy on such imports. These regulations were gradually relaxed but not completely abolished until early 1947.

F. General

The control measures above described, together with the cooperation of the industry and The Rubber Association of Canada and the development of Polymer, made possible the achievement of supplying the defence needs and supplying, also, all essential civilian requirements. Many of the personnel who were responsible for the administration of rubber controls were supplied by the industry and the Association.

One of the witnesses in the inquiry was J. A. Martin, previously Vice-President of Dominion, who had occupied the wartime positions of Rubber Controller and Rubber Administrator. It is clear from the evidence of Mr. Martin and that of other witnesses that many directions from the control authorities to the industry were conveyed and acted upon informally and in good faith without ever being reduced formally to writing. It is also clear that the control authorities utilized the industry organizations they found in existence for many control purposes and encouraged joint action along different lines in furtherance of control policy and administration, including the elimination of frills, the restriction of ranges and the making of joint applications for price adjustments. It was argued by the parties concerned in this inquiry that the influence of the control authorities went further and sanctioned everything that was done by them during and for some time after the control period. In so far as it is necessary to examine this argument it will be dealt with throughout the following Parts.

Chapter 4 - Expurgation of Minutes

In addition to the control situation, it is necessary to describe another situation which affects an appraisal of the evidence; that is, the expurgation of certain minutes of meetings after the commencement of this investigation. The fact of such expurgation makes it impossible to conclude that all evidence of price arrangements entered into at group meetings is recorded in the minutes that came into the hands of the Commission and therefore impossible to attach any positive significance to any absence of such evidence in those minutes. Such expurgation has no relevance to the mechanical rubber goods Part of this Report because the minutes of meetings of that Group did not pass through the hands of the secretary of the Association. It has relevance, however, to the other five Parts.

As will appear more fully later, the five groups of companies engaged respectively in the production and distribution of tires and tubes, accessories, footwear, heels and soles, and clothing from time to time held meetings, and the secretary or assistant secretary of the Association acted as secretary of such meetings.

The Commission, in the course of examining documents received in connection with this investigation, discovered evidence which indicated that, in some instances, two different sets of minutes covering the same meeting had been issued. In one set certain references to prices and related matters found in the other set were missing.

On October 25, 1948 G. B. Smith, the Secretary of the Association, was examined with respect to his preparation of the minutes of the rubber manufacturers' meetings, and he said that to the best of his ability the minutes interpreted the general sense of the meetings. He made no mention of having revised any sets of minutes.

Later, on December 15, 1948, as a result of the evidence obtained since his first appearance, G. B. Smith was again called before the Commission, and this time he described how he had revised certain minutes and destroyed the originals. He said:

"A. Well, some time early in the summer of -- well, I think it was early in the summer of 1947 -- the Combines Investigation Act Commissioner, Mr. McGregor, wrote to the Miner Rubber Company and one or two other companies, starting, or at least -- I suppose it was the origin of this inquiry going on today. When I learned of that I was naturally somewhat worried, and I was puzzled. I was puzzled as to why the rubber industry should have been picked on as a fit subject for investigation; because everything I had seen and heard since I joined the association led me to believe that the rubber industry is a highly competitive industry. Also, anything I knew of prices in the industry, as compared with -- I should say price trends in the industry -- as compared with general price trends in the country at that time,

as revealed by official statistics, indicated that the rubber industry was doing a very fine job in the public interest in keeping prices down.

I felt, therefore, that if the combines people had found it desirable to look into the rubber industry, that it was probably based upon a misunderstanding of the operations of the industry. And that set me to thinking -- 'Do the minutes I have written contribute to a misunderstanding of the situation?' And I thereupon, upon my own authority, sat down and rewrote some of the minutes I had written."

(Evidence pp. 3519-20)

Mr. Smith continued:

"A. And I found on reading over my minutes that in some instances there were places where I had possibly made a reference to prices which, I thought, might be misunderstood. There had been a casual mention of prices and I had recorded it. I felt that might indicate that there had actually been an actually serious discussion of prices. There were other places where I felt that I had possibly placed too much emphasis upon discussions of certain points, or where I had given the impression somewhere that there was in effect a tight and binding agreement on some points when, in actual fact, there was no such agreement, or binding and tight agreement. So, on my own authority, not wishing to place the industry in a misleading light, and also feeling that I myself might be subject to serious criticism by my directors, if I had in my minutes made a misleading statement -- I sat down, and I revised some of the minutes, and destroyed my previous copies, and replaced them with the revised minutes, and sent a set of the revised minutes to all companies concerned, and requested them to destroy their previous minutes and replace them with these. So far as I am concerned, the minutes which are now here are the only minutes."

(Evidence pp. 3521-22)

"Q. How many minutes did you have to change?

A. There might have been half a dozen.

. . .

Q. In what particular group? Did your changes extend to all groups?

A. I think it was principally in footwear. It may have been also in clothing and in heels and soles, because I reviewed them all.

. . .

Q. How far back did your corrections go?

A. To the date when price control was lifted.

Q. What date was that?

A. April 1, 1947."

(Evidence p. 3530)

Mr. Smith was asked to examine the minutes and to point out any changes he had made. He reported he had made changes in the footwear minutes of May 8, 1947 and of June 5, 1947. He said:

"A. I cannot recall, through reading the minutes here, any other. I do not say there was not, but I cannot recall any more.

Q. There might have been others up to six?

A. There might have been.

. . .

Q. Would a further study and reflection enable you to be more specific about the missing four, if there are four?

A. Well, of course, when I said six I was not referring only to these three groups of minutes.

Q. What else were you referring to?

A. Well, I think I told you I reviewed all minutes.

Q. In what other groups did you make changes?

A. I may have made them in tires and, I believe, in tire repair materials. I do not say I did, but I may have; I could not say."

(Evidence p. 3534)

Mr. Smith, according to his evidence, had changed the minutes after the Combines Investigation Commission had written to Miner on July 9, 1947.

Mr. Smith later recalled that the minutes of the footwear meeting of April 10, 1947 were among those he had revised (Evidence p. 3592). Evidence indicating that the minutes of April 10 and May 8 were positively among those revised is described in Part V relating to footwear. In the case of the Accessory Group meetings, it appears that they were revised by A. U. Oakie, Mr. Smith's assistant, upon Mr. Smith's instructions (Evidence p. 3564), and this revision is fully described

in Part IV relating to accessories. While the only instances where specific deletions can be pointed to, occur in the footwear and accessory minutes, there are other instances where correspondence indicates the discussion of price matters of which the minutes make no mention. Whether this is by reason of original omission or subsequent deletion is not known.

Chapter 5 - Significance of Certain Practices

In this Report agreements will from time to time be described relating to a considerable number of aspects of the merchandising of rubber goods. Besides agreements upon list prices these will include certain secondary agreements, e.g., agreements upon discounts to be given off list prices to various classes of middlemen; agreements as to who shall be recognized as coming within those classes so as to be entitled to the discounts; agreements upon range and specification of product; agreements upon whether shipping charges shall be borne by the vendor or the purchaser; agreements upon where warehouses will be maintained; agreements upon credit terms; and agreements upon various other ancillary matters. Such secondary agreements may be objectionable in themselves. For example, an agreement upon a common list of jobbers, not to be added to unless an applicant meets the common requirements and approval of all participants, serves to restrict entry into the jobbing field by preventing a would-be jobber, who does not meet such qualifications, from being able to convince an individual participant that it would be to his advantage to recognize him.

However, the cardinal significance attached to any such practice in this Report will not be attributed to a particular agreed practice in itself but as part of an over-all price fixing arrangement. It may be helpful, and serve to avoid repetition later, to generalize here to some extent by pointing out that an agreement, e.g., upon common discounts is meaningless unless there is (and it therefore ordinarily indicates that there is) an understanding upon the list prices to which the discounts are to apply. Then again, if there is to be an agreement upon the list prices and discounts applicable to a wholesaler, there must ordinarily be an ancillary understanding upon the definition of this term; for if a participant may recognize any one he chooses, including a retailer, as a wholesaler then obviously the agreement comes to nothing. Even when such major terms have been fixed, an agreement upon list prices and the discounts therefrom and the persons to whom such discounts will be extended may be defeated in its purpose of eliminating competition unless there is also uniformity in other things such as how the freight shall be borne and how long the purchaser shall be given to pay. Such uniformity in secondary matters may be obtained by express arrangement or merely by tacit agreement not to depart from what have become trade practices.

In the course of argument in this inquiry it was frequently put, that if the Companies did agree upon such subordinate matters as credit terms or warranties, no public detriment could be inferred therefrom. The answer is, as above stated, that the individual practices described herein are considered to be, not isolated practices, but components of price fixing arrangements and it is mainly as such that they are described in this Report.

PART II - MECHANICAL RUBBER GOODS

Chapter 1 - Introduction

This Part is concerned with the restrictive arrangements which have existed in the manufacture, distribution and sale of mechanical rubber goods in Canada over a long period of years. Some of the practices which will be described appear to have originated as long ago as 1920, or about the time The Rubber Association of Canada was formed. This Part however, will deal almost exclusively with the period since 1937, and will draw upon early material only to the extent necessary to show the development of various understandings and arrangements which have formed part of the industry's methods of operation immediately before and for some time since the end of World War II. A great deal of industry cooperation was required of and willingly given by the industry to the Government during the period of wartime controls from 1941 to 1947 and of course, no objection is taken in this Report to any measures undertaken to comply with such controls or otherwise undertaken in pursuance of wartime controls policies. As to measures in respect of which some doubt may exist regarding whether they were dictated by public policy or private interest, something will be said later as such measures are discussed.

The following are the corporations which have been most closely concerned with the activities to be described in this section:

Dominion Rubber Company Limited
The Goodyear Tire & Rubber Company of Canada, Limited
Dunlop Tire and Rubber Goods Company Limited
Gutta Percha & Rubber Limited
The B. F. Goodrich Rubber Company of Canada Limited

The expression "the Companies" as hereinafter used will ordinarily refer to the four corporations first above mentioned. The position of Goodrich is peculiar to itself. It was interested in fewer lines of mechanical rubber goods than were the other Companies, although its interest was expanding. Its concern with the joint arrangements was therefore considerably less extensive than that of the other four. It was however a participant in respect of such common products as rubber linings, roll coverings, fire and railway hose, F.H.P. belts, all-rubber garden hose and packing.

The following corporations have been largely concerned with joint activities relating to the merchandising of only one line of mechanical rubber goods, that is, all-rubber garden hose:

G. L. Griffith & Sons Ltd.
Viceroy Manufacturing Company Limited
Barringham Rubber & Plastics Limited
Firestone Tire & Rubber Company of Canada Limited

These corporations, together with those listed above, will be referred to hereinafter as "the Group".

One other company is associated with the Group - Canadian Allis-Chalmers Limited. The special position it bears in relation to the industry will be described in the chapter on V-belting.

Chapter 2 - Description of the Product

There are three main classes of mechanical rubber goods - hose, belting and miscellaneous industrial products. A large proportion of mechanical rubber products is consumed by the industrial user, either in plant installations, for example conveyor belting in grain elevators, coal mines, etc., or in operating equipment, for example rubber covered rolls in newsprint manufacture. Substantial quantities are incorporated by manufacturers in various types of mechanical equipment like agricultural machinery, refrigerators, etc. Smaller quantities of different types of mechanical rubber goods are sold to the distributive trades for replacement sales and for sales direct to domestic consumers.

A wide variety of hose is produced in Canada, the main categories being heavy and light industrial hose, fire hose and garden hose. Hose varies considerably in construction depending on the type of fabric or other reinforcement like wire winding, employed, the number of plies, the quality of rubber used and the types of cover or liner applied. Some industrial hose is manufactured in up to twelve plies of fabric. Manufacturers of mechanical rubber goods produce over 1000 different lines of hose alone, taking sizes, number of plies and range of qualities into consideration. Important types of industrial hose are material conducting hose, suction hose, steam hose, spray hose, air hose, water hose, etc. There are four main types of fire hose - corporation, underwriters', mill and forestry hose, the construction of which depends in part on different specifications laid down for safety purposes. Rubber garden hose is produced in only two major types - cotton content (reinforced) hose and all-rubber hose.

As with hose, most of the important types of rubber belting are manufactured in Canada. The two main categories are conveyor belting and transmission belting. Conveyor belting is used extensively for carrying material in the mining industry, in manufacturing and storage facilities and in a number of miscellaneous installations like parcel conveying in post offices. The market for conveyor belting in Canada is unusually great because of the high proportion of such works as mines, pulp and paper mills and grain elevators in operation across the country in relation to population. Conveyor belting is a highly "engineered" product, i.e. it requires considerable attention to details of suitability and installation, because operating conditions are so varied. Very little conveyor belting is therefore stocked either by manufacturers or distributors. Rubber transmission belting may be employed wherever it is desired to transfer mechanically a power supply from one drive to another, and of course is used extensively in manufacturing generally, and in motors of all types. In addition to the flat type of heavy belt which is used in large installations, the industry produces a large volume of V belting which drives its name from the cross sectional shape of the belt. V belting is composed of two important sub-classifications - fractional horse power or F.H.P. belts used in connection with small sized motors, and

multiple V belts which are mounted together in parallel on more than two sheaves. The quality of belting is determined by a number of factors - the weight of the fabric used, the abrasive qualities of the cover stock, the adhesion of the plies of the fabric to each other, the adhesion of the cover stock itself, the flexing quality of the belt and its tensile strength.

The term miscellaneous industrial products is here applied to a number of important groups of products. These include printing and industrial rubber covered rolls and roll covering, tank and trough and pipe lining, mats and matting, floor covering, gaskets, washers and other types of packing. In addition, the term as used here includes another group of products which are not rubber goods at all but which are merchandised by the larger rubber companies along with their mechanical rubber products. These are items used in conjunction with rubber goods such as sundry metal goods like nozzles, couplings, clamps, valves and other fittings for hose, belt fasteners, belt cutters and other accessories. Beyond these important types of miscellaneous mechanical rubber goods is a very large range of products of almost unlimited variety. This range of specially moulded or extruded products is manufactured according to specifications for producers of countless industrial and household items. One rubber company for example, makes three to four hundred separate parts for the automobile industry in Canada alone. No single item or even group of items in this latter category is of great consequence in dollar value, but together they contribute substantially to the earnings of most of the larger manufacturers of mechanical rubber goods.

This Report will deal primarily with the list of products recorded in the "work sheets", hereinafter described at length, which are maintained by the five largest manufacturers. The main groups of products found in the work sheets are listed in Appendix A. It is estimated that about 75 per cent of the total sales of mechanical rubber goods made by the larger manufacturers are of products listed in these work sheets.

Chapter 3 - Sources of Supply

The major producers of mechanical rubber goods in Canada are:

- Dominion** - The Company manufactures a very broad range of mechanical rubber products, numbering several thousand items at its plant in Montreal. It is one of the largest producers in Canada of both belting and hose although it does not manufacture V belts. The latter however, are manufactured by Goodrich for resale by Dominion. Rubber covered rolls, particularly for pulp and paper mills, are something of a Dominion specialty. The Company produces also a wide range of moulded and extruded goods. Total sales of mechanical rubber goods made by Dominion in 1948 amounted to over 7 million dollars.
- Goodyear** - This Company, with its plant at Bowmanville, Ontario, is also a manufacturer of a very wide range of mechanical rubber goods, including hose and belting of all kinds and large quantities of rubber packing. Goodyear however, does not produce tank or pipe linings. Although it manufactures a considerable variety of moulded goods, its range of these products is not so great as is that of some of the other companies. During 1948, Goodyear sold about 6 million dollars worth of mechanical rubber goods of all kinds.
- Dunlop** - At its plant in Toronto, Dunlop manufactures most important types of belting and hose, and in addition it produces packing and other press goods (i.e., moulded, extruded and built up products). Dunlop does no tank or pipe lining or other rubber-to-metal work, as the lining process is referred to. Also, it is only a small factor in the production of rubber covered rolls. Dunlop's sales of all classes of mechanical rubber goods in 1948 totalled about 4 million dollars.
- Gutta Percha** - At its Toronto plant, Gutta Percha manufactures a considerable range of belting and hose. It buys multiple V belts for resale from Dunlop, and F.H.P. belts for resale from Goodrich. Gutta Percha produces also many types of press goods including packing and pipe lining and rubber covered rolls, except pulp and paper mill rolls. Sales by Gutta Percha of mechanical rubber goods of all kinds also amounted to close to 4 million dollars in 1948.
- Goodrich** - In its Kitchener plant, Goodrich manufactures a broad range of moulded and extruded products, though it is not as important a factor in the mechanical rubber products field as a whole as the other four companies. However, it does produce considerable quantities of rubber linings, roll coverings, some packing, certain types of railroad hose, all-rubber garden hose and fire hose of cotton jacket, but not rubber jacket construction. Since 1945, Goodrich has produced F.H.P. belting for sale primarily to original equipment manufacturers and other rubber companies. Goodrich purchases for resale from Dominion, flat belting, industrial

hose and cotton content garden hose. Prior to 1935 or 1936, Goodrich had no industrial rubber products division, but since that time the growth of this division has been rapid. In 1948, Goodrich sold over 2 million dollars worth of mechanical rubber goods.

These companies are all members of the Rubber Association of Canada. Four other companies, also members of the Rubber Association, manufacture limited quantities of mechanical rubber goods in Canada. These are:

- Griffith - In its plant at Stratford, Griffith manufactures a substantial quantity of custom moulded rubber goods, much of it for sale to automobile manufacturers, particularly lines like moulded sponge rubber and products in which rubber is made to adhere to metal. In addition, Griffith is not an unimportant factor in the manufacture of all-rubber garden hose and baby carriage tiring. Only a small part of Griffith's total sales of mechanical rubber goods which in 1948 amounted to something less than a million dollars was accounted for by products listed in the work sheets.
- Firestone - At its Hamilton plant, Firestone manufactures limited quantities of moulded goods, particularly rubber-to-metal products. It also manufactures rubber tiring and all-rubber garden hose. Total sales of mechanical rubber goods by Firestone amounted to about a half million dollars in 1948 of which only a small part was made up of products listed in the work sheets.
- Viceroy - Manufactures in its Toronto plant a limited line of mechanical goods which includes roll covering, rubber tubing, gaskets, rubber mats and a special range of extruded goods. It also produces all-rubber garden hose and baby carriage tiring. Its total sales of mechanical rubber goods amounted to over \$300,000 in 1948 but only a fraction of this related to items in the work sheets.
- Barringham - In 1948, Barringham at its plant in Oakville manufactured a total of under \$200,000 worth of mechanical rubber goods, which included rubber gaskets, casters, rubber tiling, other moulded and extruded goods and all-rubber garden hose, the last being the only standard item recorded in the work sheets.

The Canadian market for mechanical rubber goods is further supplied by perhaps two dozen other manufacturers in Canada. The output of the plants of these companies however, is of a comparatively limited character. Generally speaking, the range of products at least of the heavier or more standard type is restricted and the volume is not substantial. Data received by the Commission from the rubber industry indicate that the companies named above produced about 90 per cent of all

the mechanical rubber goods manufactured in Canada in 1948. However, the percentage of total Canadian production controlled by the Group varies with different classes of products. The following table shows for 1948 the percentage of total Canadian production accounted for by the Group, of certain classes of mechanical rubber goods for which separate categories are set up by the Dominion Bureau of Statistics.

Table I

Production of Certain Classes of Mechanical
Rubber Goods in Canada

<u>Class of Products</u>	<u>Total Canadian Production by Production the Group (Selling Value (Selling Value at the Works) at the Works)</u>		<u>Percentage</u>
Rubber belting	\$7,050,984	\$7,050,984	100
Other rubber belts (excluding fan belts for automobiles)	1,135,582	1,135,514	100
Rubber hose	7,033,099	7,009,410	99.7
Rubber coverings and linings for tanks, pipes, etc.	1,072,008	1,064,360	99.3
Horseshoes, horseshoe pads, etc.	68,105	67,312	98.8
Rubber weatherstripping	72,762	71,833	98.7
Rubber roll covering	61,955	60,779	98.1
Rubber tubing	207,054	194,893	94.1
Moulded rubber goods, n.e.s.	1,180,440	1,100,705	93.2
Rubber packing	371,917	332,977	89.5
Rubber supplies for plumbers, etc. plugs, washers, etc.	874,514	751,750	86
Rubber automotive and aeroplane parts	2,293,191	1,798,369	78.4
Rubber floor mats, matting, stair treads, etc.	630,566	447,183	70.9
Rubber covered rolls	1,371,968	876,998	63.9

Even within the categories listed above, the degree of control of production enjoyed by the Group varies with particular products. For example, the

category designated rubber covered rolls, includes wringer rolls as well as printing and industrial rolls and the Group accounts for a substantially higher percentage of total Canadian production of the latter types of rolls than of the class taken as a whole.

In a memorandum written in 1947 by O. H. Barrett, Assistant to the President of Goodyear, to A. G. Partridge the President, and R. C. Berkinshaw, the Vice-President and General Manager, the dominant position of the Group was affirmed as follows:

". . .

The group comprises representatives of all manufacturers of mechanical rubber goods in Canada, with the exception of a small concern in British Columbia, The Huntington Rubber Co., which, it is understood, consumes about fifty tons of rubber a year in its manufacturing operations and offers, at present, no real competition to the group.

". . ."

(Exhibit 1009)

The writer of this memorandum had in mind a more limited definition of mechanical rubber goods than is used here. The statement is significant however, with reference to the dominant position in the manufacture of the heavier and more standard types of mechanical rubber goods held by "the Group", identified by Mr. Barrett as Dominion, Goodyear, Dunlop, Gutta Percha, Goodrich, Viceroy, Barringham, Firestone and Griffith.

Production in dollar terms of mechanical rubber goods increased greatly from 1938 to 1948. Part of the apparent increase has been due to the rise in the price level during that period, but primarily it is a reflection of the rapid industrialization of this country since the outbreak of World War II. The demand for all types of mechanical rubber products has risen to new levels, and has derived impetus from two directions: from the increased investment in Canadian industrial plant and from an increase in the production of many kinds of goods which require the incorporation of mechanical rubber products in their manufacture.

Chapter 4 - Distribution

Because of the wide variety of products sold by the mechanical goods divisions of the rubber companies and because of certain technical problems associated with some of them, the distribution system employed by most of the Companies is complex.

Most types of mechanical rubber goods with the important exception of some kinds of belting and other of the heavier products are stocked at and sold from the branch offices of Goodyear, Dominion, Gutta Percha and Dunlop. Branches handling mechanical goods are located in the following cities:

Goodyear - Vancouver, Calgary, Regina, Saskatoon, Winnipeg, London, Toronto, Montreal, Quebec and St. John, N.B.

Dominion - Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Montreal, St. John, N.B. and Halifax.

Gutta Percha - Victoria, Vancouver, Calgary, Edmonton, Regina, Winnipeg, Toronto, Ottawa, Montreal, Quebec, St. John, N.B. and Halifax.

Dunlop - Vancouver, Calgary, Edmonton, Regina, Winnipeg, Toronto, Montreal and St. John, N.B.

In addition, sales offices where mechanical rubber goods are not stocked are maintained by the Companies in various centers. Goodrich has no branches which stock mechanical rubber products as such.

The bulk of mechanical rubber products is sold through the following classes of outlets:

Special Agents - sometimes termed Distributing Agents, operate in similar fashion to branch offices of the rubber companies. As such, they deal exclusively with one rubber manufacturer, though they handle in addition a wide variety of non-rubber products in the hardware or engineering field. The Special Agents handle those types of mechanical rubber goods, which, depending on the locality, are needed to service their trade. The Special Agents enjoy the highest discount accorded any customer.

National Distributors - are more or less the same as Special Agents, but they are not permitted to handle all lines. Conveyor belting, for example, is said to require the services of a qualified engineering staff which National Distributors may not have, and hence they are granted no discount on this product. In general they receive the same discount as Special Agents. They cover a much wider field, usually national in scope, than do the Special Agents.

Jobbers - handle a fairly complete range of mechanical rubber goods. They are frequently referred to as the 'J' List. Not all of them are sold by each rubber manufacturer. Dunlop for example, would regularly sell only about 20 per cent of the recognized jobbers. The 'J' List accounts receive a discount on the rubber products they handle which is less than that enjoyed by the above classes of customers. They also of course are jobbers of many lines other than mechanical rubber goods.

'N' List Accounts - are companies which qualify for this listing by virtue of being large users of mechanical rubber goods. These companies receive a discount from the dealers' price list which is less than that of the jobbers. Pulp and paper mills and large mining companies are two of the most important types of accounts which are accorded 'N' listing.

'B' List Accounts - fall into two categories. One group of companies on the 'B' List is composed of small jobbers who do not do much stocking of mechanical rubber products. The other group is composed of original equipment manufacturers which are not on any special original equipment list (see below). These manufacturers buy some mechanical rubber items to be incorporated in or attached to the equipment they manufacture, and they may also buy some goods for replacement purposes to be sold to their own dealers. 'B' List accounts receive the same discount as do those on the 'N' List.

Dealers - are sold at straight list prices and do not normally do business with the head offices of the rubber companies. Small manufacturers buy at the same price as dealers.

Special Lists - The Companies have established other categories of customers for particular rubber products which to some extent cut across the general system of distribution they have adopted, outlined above. A number of these special lists are composed of manufacturers of various types of original equipment. When original equipment manufacturers (O.E.M.) accounts secured recognition by the rubber industry, they were usually accorded somewhat better prices than were enjoyed by 'B' or 'N' List accounts. The following are the special lists referred to:

- Air Compressor Manufacturers List
- Baby Carriage Manufacturers List
- Chain Strapping Manufacturers List
- Chemical Engine Hose Manufacturers List
- Conveyor Equipment Manufacturers List
- Portable Conveyor Equipment Manufacturers List
- Endless Thresher Belt Preferred List
- Fertilizer Manufacturers List
- Fire Equipment Manufacturers, Suction Hose List
- Garden Hose Preferred List
- Hose Equipment Manufacturers List
- Line Elevator Manufacturers List
- Pulp Screen Manufacturers List
- Spray Pump Manufacturers List

Sprinkler Manufacturers List
Terminal Grain Elevator Contractors List
Thresher Equipment Manufacturers List
Tire Pump Manufacturers List
Trace Manufacturers List

The distribution of one important group of mechanical rubber products, namely, fractional horsepower and multiple V belting, is not in accordance with the system just described. A different pattern of distribution has arisen in the merchandising of these products which is described in detail in the chapter on V belting. An additional product which is not distributed in the same way as other standard mechanical rubber goods is garden hose. Only two classes of customers for garden hose were recognized by manufacturers - these were preferred accounts and dealer accounts. The former received the greater discount and were the largest distributors. They included the departmental and other chain stores.

The Companies have adopted the distribution system set out above for those mechanical rubber goods listed in the work sheets which they manufacture. As already indicated the position of Goodrich is peculiar to itself in certain respects. Its branches do not handle mechanical rubber goods; it sells fractional horsepower belts primarily to original equipment manufacturers; and there are some other differences. The all-rubber garden hose manufacturers have adopted the system in respect of that product although there are some minor differences among these companies also. Viceroy, for example, does not sell garden hose through dealers. Firestone sells it chiefly through its own, or its enfranchised, stores.

Non-standard lines of mechanical goods like custom moulded and extruded products do not follow the above patterns but are sold from head office on a negotiated price or tender basis. This Report, however, is not directly concerned with these products.

Chapter 5 - The Work Sheet System

The key to an understanding of the merchandising of mechanical rubber goods in Canada lies in a binder of looseleaf mimeographed sheets of paper called work sheets. These are numbered for easy reference and total approximately 250. Together they are known as the Mechanical Work Book. A summary of the part which they played in the selling policies of the manufacturers, together with an outline of the principal common steps taken by the Companies in their operations, is given in the following extract from the memorandum already referred to, prepared in August or September 1947, by O. H. Barrett, Assistant to the President of Goodyear:

"Companies regularly represented in group meetings are: Goodyear, Dominion, Gutta Percha and Dunlop, with the addition of Goodrich where fire hose is involved and the further addition of Goodrich, Barringham, Firestone, Griffiths and Viceroy where all-rubber garden hose is concerned. Meetings of some or all of the above group have been held from time to time for the past thirty years or so and minutes of these meetings have been distributed to those concerned. In addition to the minutes, 'work sheets' identical in form are kept by each of the first five companies above-mentioned on which are recorded the prices, discounts, conditions of sale, lists of customers to whom special discounts are allowed and special notes. This material relates to the complete list of mechanical goods manufactured by the various companies.

The work sheets reflect the changes made in the above particulars from time to time as recorded in the minutes and correspondence between the various companies. The correspondence consists of letters which are passed between the various companies between the dates of the meetings and at times the minutes of those meetings summarize the changes in particulars noted in the correspondence.

It is usual for our representative to keep a loose-leaf copy of the work sheets which is amended and brought up to date from time to time by the insertion of new pages. . . .

. . .

. . . Mr. Nicholls (Manager of the Mechanical Division) feels that the keeping of work sheets is absolutely necessary, if the present operating practice is to continue, . . ."

(Exhibit 1009)

Reference will be made to the "work sheets" throughout this Part, and the contents of them will become clearer as the Part proceeds. As Mr. Barrett indicates above, one set of these

work sheets was maintained by each of Dominion, Dunlop, Goodyear, Gutta Percha and Goodrich. The pages themselves, were usually typed and mimeographed by a Goodyear representative and circulated to the other four companies. From time to time, work sheet pages covering garden hose in which the other four members of the Group were interested were distributed to them. Occasionally, work sheets were prepared by other companies which were more interested in a particular product than was Goodyear, for example Dominion, with respect to rubber covered rolls, and were then circulated in the same way. This procedure was sometimes carried out even where some of the Companies were not making the product to which the particular sheet related. The reason for this was explained in a letter written by S. G. Nicholls, Manager of the Mechanical Division of Goodyear, to J. T. Dunn, employed in the Mechanical Division of Dominion, on July 1, 1947. It was a practice of many years standing to send copies of all relevant inter-company correspondence to all interested parties and in this instance, copies were sent to G. Bergeron, General Sales Manager of the Mechanical Division of Dominion; C. N. Larsen, General Sales Manager of Gutta Percha; E. H. Coon, Manager of the Mechanical Goods Department of Gutta Percha; H. S. Pritchard, Sales Manager of the Industrial Rubber Goods Division of Dunlop; H. S. Buchanan, employed in the Industrial Rubber Goods Division of Dunlop; G. L. McCrea (Mr. Nicholls' predecessor, employed by Goodyear after April 1947 as a consultant) and G. V. Davis, employed in the Mechanical Goods Division of Goodyear. The letter reads in part as follows:

"-RE: ROTARY DRILL HOSE-

Replying to your letter of June 23rd. You raised the question as to whether the list should be released to all or retained for the use of the two Companies involved. I think possibly that this matter might be left for discussion at our next meeting. We feel that any time a list is discussed it should be put in the work sheets and available to all parties, which eliminates any possibility of error should someone who had not been expecting to quote decide to do so.

As regards the list in question, none of the other Companies, up to the moment, have signified any intention of making the Rotary Hose, but in order to keep this clear, we would suggest that it be referred to the next Meeting.

In the meantime, we would suggest, for inclusion in the list, Fred W. Phillips Supply Company, Calgary."

(Exhibit 1116)

The work sheets crystallized agreements of various kinds among the manufacturers which were arrived at in several different ways. As indicated in Exhibit 1009, meetings of representatives of the Companies have been held from time to time for many years, and they have been held on an average of six or eight times per year. Meetings of the Group have

been infrequent, but they too have recurred from time to time since sometime in the 1930's. Representatives from Goodyear, Gutta Percha, Dunlop and Dominion have regularly attended the meetings, while the Goodrich representative has from time to time attended general mechanical goods meetings, and from time to time has attended the meetings of the Group. Representatives of the other four companies have attended only Group meetings. The meetings have generally been held in the Board Room of the Gutta Percha Company in Toronto but occasionally they have been held in the offices of the Rubber Association in the Commerce and Transportation Building, Toronto, and infrequently in Montreal.

Agenda for the meetings, listing the subjects to be discussed, were commonly circulated by the Goodyear representative some days prior to the date set for the meeting. C. N. Larsen, General Sales Manager of Gutta Percha usually acted as Chairman. The meetings have discussed many problems which face the rubber industry and have also from time to time reached agreement on such matters as the following:

- Prices to be charged by the manufacturers for the products of the industry
- Discounts to be allowed various classes of customers
- Customers to be accorded recognition as belonging to the various classes
- Bids to be quoted on tenders
- Prepayment of freight and freight charges
- Range and specifications of products
- Charges to be made for special work and technical services to customers
- Restriction on the resale or use of some products by particular customers
- Resale price maintenance on some products
- Other terms and conditions of sale.

The discussions and agreements were incorporated in summary minutes usually prepared by G. L. McCrea, Manager of the Mechanical Division of Goodyear, or by his successor, S. G. Nicholls. Copies of these minutes were then circulated to the representatives who had attended the meetings and to the other interested parties.

When common ground was reached at a meeting, and an agreement made, the work sheets were changed accordingly either by amending the existing work sheet in pencil or ink or by replacing it with a new mimeographed sheet. The procedure of amending the mechanical work book is illustrated in the following extracts from the minutes of a meeting held on May 16, 1947, prepared by G. L. McCrea and dated May 19, 1947:

"5. Any pencil changes on the price of Fire Hose uncoupled, page 60, made at our Meeting are to be eliminated, and prices dated November 18, 1946, are still in force."

"11. Page 38, Lead Press Hose: When lengths of Hose sold are under 50 ft. there will be no cut length charge, as applies to Wrapped Hose.

11-A Add to page 26, 'Endless Thresher Belt', 40 ft., 12"x4 ply, \$29.60 each."

"12. Page 37 of the Work Sheets, Clause 19: Add 1 $\frac{1}{4}$ ", 1 $\frac{1}{2}$ ". These are additional sizes to the 1" already shown."

"19. Re Export - add to page 142, Clause 13:

- (3) When goods are bought for export, but delivered in Canada, only Domestic prices may be quoted based on customer's domestic price classification.
- (4) With exceptions of the above, and where goods are to be shipped directly out of Canada by the Rubber Company, - prices are not subject to consultation.

New page No. 142 will be issued."

(Exhibit 1236)

Frequently the change was made upon receipt by the interested companies of a "release" or a "clearance" letter from a Goodyear representative similar to the following letter dated July 28, 1947 from S. G. Nicholls (Goodyear) to G. Bergeron (Dominion), copies being sent to Messrs. Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), McCrea (Goodyear) and Davis (Goodyear):

"All are in accord, and the following is released, effective at once:

The 20% discount at present allowed to La France, Bickle and Sterling is to be changed to 25% on Corporation Fire Hose only."

(Exhibit 1212B)

These clearance letters sometimes made the change effective on receipt of the letter and sometimes prescribed a future effective date.

The meetings, as has been seen, were only one method by which amendments to the work book were brought about. It was usually necessary to hold them when a number of matters had to be considered. However, changes in one or two items frequently were made as a result of the interested companies reaching agreement by mail or by telephone. In such circumstances, a change was suggested by one company to Goodyear, and other companies received copies of this letter. Their opinions were then expressed in letters addressed to Goodyear, with copies to other interested parties. If the reaction to the proposed change was favourable, Goodyear issued a release letter, making that change effective. If it were a sufficiently lengthy amendment, Goodyear prepared new work sheets and circulated these. When there was no general agreement to a proposed change, the evidence discloses few instances where any of the Companies took independent action. By the use of this technique, the work of jointly pricing the large numbers and varieties of mechanical rubber products was reduced to manageable proportions and kept up-to-date.

The work sheets then became the ultimate authority or source of reference for each company in establishing prices, discounts, customers' trade classifications, bids for tenders, etc. Individual company price lists were printed from the material contained in the work sheets and were sometimes circulated to the other interested companies. Catalogues were dealt with in a similar fashion, as exemplified by a letter from H. S. Pritchard (Dunlop) to G. L. McCrea (Goodyear), with copies to Messrs. Davis (Goodyear), Bergeron (Dominion), Dunn (Dominion), Larsen (Gutta Percha), E. H. Coon (Gutta Percha), C. R. Little, employed in the Mechanical Division of Goodyear, C. D. Jacobs, employed in the Industrial Products Sales Division of Goodrich and H. P. Hawkins, General Manager of the Industrial Products Sales Division of Goodrich, written April 3, 1947 as follows:

"It is a pleasure to mail you with this letter a copy of the subject Catalogue (Dunlop Industrial Rubber Products Catalogue No. 108, dated February 21, 1947).

It would be appreciated, if you detect any errors, if you would be good enough to call same to our attention.

We would appreciate receiving copies of other Catalogues when they become available."

(Exhibit 1248)

The importance to the Companies of strict adherence to the system described above is indicated in two letters from Goodyear dated June 12, 1947 which were written as a result of Gutta Percha's anticipating a "release" by informing its sales organization of a decision arrived at by the Companies. The first letter, written by S. G. Nicholls (Goodyear) to G. L. McCrea (Goodyear), copies being sent to Messrs.

Bergeron (Dominion), Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Fritchard (Dunlop), Buchanan (Dunlop) and Davis (Goodyear) reads as follows:

"Effective June 11th, the present width restrictions on Matchless, Superex, Record Maker and Stacker (brand names of the various companies) Conveyor Belting are withdrawn.

. . .

The paragraph on Work Sheet, page 15, referring to restrictions on Record Maker and equal grades should be deleted.

The reason we are dating this release the 11th is that Mr. Coon advised his organization yesterday.

We should like the procedure re-affirmed to the effect that no information on prices or any other matters will be released to the Organizations until final clearance has been made by letter, telephone or telegraph."

(Exhibit 1232A)

Mr. Coon had fairly recently assumed responsibility for such matters in the Gutta Percha Company and G. L. McCrea apparently wished to emphasize the desirability of following the established procedure and repeated Mr. Nicholls' observations in the following letter, also dated June 12, 1947 addressed to Mr. Bergeron, with copies to the same individuals as above:

"Referring to Mr. Nicholls' letter of June 12th, the purpose of this letter is to advise you that the paragraph on work sheets, page 15, referring to restrictions on Record Maker and Equal Grades should be deleted, effective as of June 11th.

This means that Stacker quality and equal grades of Conveyor Belting will be made in the pre-war quality but no reference or information is to be given to our Branches as regards Friction Pulls, Cover Tensiles or Crude Rubber content.

It was somewhat unusual for Mr. Coon to issue a letter, as this decision had not been cleared with the other Companies.

I would like to re-affirm a very old understanding that no decisions will be acted upon by any individual Company until they have been cleared and any decisions made by verbal conversations, while they can come into effect at the time these decisions are made, will be confirmed by correspondence as a matter of record.

Will you kindly make the changes mentioned in this letter on your Work Sheets and you will likely want to make a note on your

Work Sheets of the facts mentioned above in connection with Friction Hose, (sic) Cover Tensiles and Crude Rubber content."

(Exhibit 1232B)

The work sheet system was clearly still in operation in January 1949, which is the last month in which a number of work sheets were added to the work books, as indicated by the date shown at the top of each page, before the work books were received for copying by the Commission. This is confirmed by other documentary evidence. The latest reference in the correspondence to the work sheets is contained in a letter dated April 4, 1949 which was sent by S. G. Nicholls (Goodyear) to Messrs. Coon (Gutta Percha), Pritchard (Dunlop), Hawkins (Goodrich), Davis (Goodyear) and Little (Goodyear), and reads:

"On Work Sheet, page 37, please delete Clause 20, which reads as follows:

Straight and spiral colored stripes on outside covers of standard Mechanical Goods lines of Industrial Hose are eliminated."

(Exhibit 1561A)

Chapter 6 - Prices

The prices of the products listed in the work sheets (Appendix A) have been fixed by understanding among the five largest manufacturers of mechanical rubber goods in Canada, that is to say, Dominion, Goodyear, Dunlop, Gutta Percha and Goodrich, although each such company was not interested in every product so listed. As pointed out earlier, a wide variety of other goods which might be classed as mechanical rubber products are manufactured by each of the Companies, but this Report is concerned only with the standard types of goods which are recorded in the mechanical work book. That the selling prices of these products have been the subject of agreement among the Companies is made clear by all the evidence. Statements by two company officials set out the general position. The first is contained in a memorandum dealing with post-war planning relating to mechanical rubber goods, written October 30, 1942 by H. P. Hawkins, General Manager of the Industrial Products Sales Division of Goodrich to G. W. Sawin, the President. Goodrich, it will be recalled, produces a much smaller number of the standard lines than the other four companies. The relevant paragraph reads as follows:

"SALES POLICIES

- (a) Price Structure - Our price structure in the main is determined by the application of a satisfactory profit to our developed factory costs, taking into consideration competitive conditions. Also, in many instances, our price structure is determined by mutual agreement with our competitors. We have found both methods satisfactory in their respective categories and we do not recommend changing this policy."

(Exhibit 1494)

The second statement is contained in the memorandum already referred to, written in late August or early September 1947 by O. H. Barrett and addressed to Messrs. A. G. Partridge and R. C. Berkinshaw, President and General Manager, respectively, of Goodyear. Referring to a possible investigation under the Combines Investigation Act, Mr. Barrett wrote the following:

". . .

D - SOME CONCLUSIONS AS TO THE RUBBER COMPANIES' POSITION

There would be ample evidence which could be drawn from the material on file or, if no material were on file, from oral examination of various company representatives, that:

1. Prices for all lines of mechanical rubber goods (except molded goods and a few special items) have been and are fixed from time to time by actual or tacit agreement. . . .
2. The group also keeps lists, which are changed from time to time, of the various customers to whom special prices are given, based on their respective trade classifications as decided by the group. This means that the special price classifications are made available only to those purchasers whose names appear on the respective lists.

". . ."

(Exhibit 1009)

The technique by which this agreement was brought about has been described in general terms in the chapter on the Work Sheet System. Two examples are given below. The first is concerned with spanner wrenches - a product not manufactured by the Companies or sold in any large quantities by them. The reason the price of spanner wrenches and of other products such as those listed in the Appendix under the heading "Accessories and Metal Goods" was a matter of concern to the Companies, is that they were almost invariably sold in conjunction with other mechanical rubber goods products and consequently, if the Companies were free to quote whatever price they wished on these additional items, price concessions could be made to customers even though established prices for the more essential products were strictly adhered to.

On November 27, 1940 H. S. Buchanan (Dunlop) wrote to G. L. McCrea (Goodyear) with copies to Messrs. Scott, then General Manager of the Mechanical Goods Department of Gutta Percha, Hawkins (Goodrich), Nicholls (Goodyear), Pritchard (Dunlop), and J. M. S. Carroll, then Manager of Mechanical Sales for Dominion:

"We would suggest that prices be established covering Universal Spanner Wrenches for Rocker or Pin Lug type couplings as follows:

	<u>East</u>	<u>West</u>
2½"	\$4.85 doz.	\$5.10 doz.
1½"	4.05 "	4.25 "

Our reason for suggesting that a price be set up on these Spanners is due to the fact that there is quite a substantial quantity of Hose out now with Rocker Lug Couplings, and inquiries are being received for prices on the Universal Spanner in conjunction with inquiries for Fire Hose."

(Exhibit 1394A)

On November 29, J. M. S. Carroll (Dominion) wrote to G. L. McCrea (Goodyear) with copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), and Nicholls (Goodyear):

"We have noted the suggested prices, as given in letter to you from Mr. H. S. Buchanan dated 27th instant.

If these suggested prices are satisfactory to all the interested Toronto parties we can advise that so far as our Company is concerned they can be considered as okay.

. . ."

(Exhibit 1394B)

Also, on November 29, W. J. Scott (Gutta Percha) wrote to McCrea (Goodyear) with copies to Messrs. Buchanan (Dunlop), Pritchard (Dunlop), Nicholls (Goodyear), Carroll (Dominion), and Hawkins (Goodrich):

"I have received copy of Mr. Buchanan's letter to you of the 27th instant, suggesting prices to be set up on 2½" and 1½" Universal Spanner Wrenches such as are used with the Rocker Lug type of coupling.

These prices are quite satisfactory to us and have been figured on the proper basis."

(Exhibit 1394D)

Finally, on December 5, S. G. Nicholls (Goodyear) wrote to J. M. S. Carroll (Dominion) with copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Hawkins (Goodrich), and McCrea (Goodyear):

"The prices that Mr. Buchanan suggested in his letter of Nov. 27th are agreeable to all and are released, to be made effective by regular mail on Friday, December 6th. We would suggest that these prices be noted on Work Sheet page 95:

Universal Spanner Wrenches-

	<u>East.</u>	<u>West.</u>
2- $\frac{1}{2}$ ".....	\$4.85 doz.	\$5.10 doz.
1- $\frac{1}{2}$ ".....	4.05 "	4.25 "

Sales Tax Included."

(Exhibit 1394E)

It will be noted that although several of these communications were addressed to H. P. Hawkins of Goodrich, apparently no reply was received from him. This was common practice. Goodrich, although manufacturing a limited line, was expanding production and the other companies frequently circulated to Mr. Hawkins such information as they had occasion to believe Goodrich might be interested in. In the event that Goodrich decided to begin production of a particular product, or bought the item for resale, it had the prices which the other manufacturers were charging.

The second of the two examples referred to above has to do with mill fire hose. In a letter written by J. M. S. Carroll (Dominion) on February 12, 1941 to Mr. McCrea (Goodyear), with copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Nicholls (Goodyear) the following appears:

"We find that our current tax-included prices on sizes up to 2" I.D. are too low in relation to U.S. prices after Duty, Exchange Taxes and Sales Tax, have been added.

Hereunder we show (a) our current Dealer prices and (b) our suggested increased Dealer prices.

We also show on the right hand side percentage of price increase we are suggesting on sizes 1", 1 $\frac{1}{4}$ ", 1 $\frac{1}{2}$ " and 2":-

<u>Size</u>	<u>Current Dealer price</u>	<u>Suggested Increased price</u>	<u>Percentage of Suggested Increase</u>
1"	\$24.00	\$28.00	16.6
1 $\frac{1}{4}$ "	27.00	32.00	18.5
1 $\frac{3}{8}$ "	30.00	36.00	20.
2"	39.00	43.00	10.2
2 $\frac{1}{2}$ "	57.00	None	-

We are not suggesting any price increase on 2- $\frac{1}{2}$ " size as this item appears to be reasonably in line with costs and also with the laid-down price of U.S. manufactured hose.

In the event that our suggested increased prices do not meet with the approval of other interested Toronto parties we would appreciate receiving any alternative suggestion."

(Exhibit 1389C)

On February 18, Mr. McCrea (Goodyear) replied, sending copies to Messrs. Scott (Gutta Percha), Fritchard (Dunlop), Buchanan (Dunlop), and Nicholls (Goodyear):

"Replying to your letter of Feb. 12, I am wondering whether the suggested prices you are quoting on 1", 1- $\frac{1}{4}$ ", 1- $\frac{3}{8}$ " and 2" Mill Hose include the 10% Defence Tax where you show your suggested increase in prices. If they do, we would not be favorable to increasing the prices along your suggested lines.

I don't know how the others feel about it because I have not discussed it with them; but we would not want to commit ourselves to the substantial increases suggested in your letter."

(Exhibit 1389D)

Also on the 18th, W. J. Scott (Gutta Percha) wrote to Mr. McCrea (Goodyear), copies being sent to Messrs. Nicholls (Goodyear), Buchanan (Dunlop), Fritchard (Dunlop) and Carroll (Dominion):

"I duly received copy of Mr. Carroll's letter to you of the 12th instant on the subject of Cotton Rubber Lined Mill hose and in checking our position of selling prices versus costs, I would favour the adoption of the suggested prices for sizes 1", 1 $\frac{1}{4}$ ", 1 $\frac{3}{8}$ " and 2", leaving the price of 2 $\frac{1}{2}$ " unchanged.

If these new prices are acceptable to the other interested parties I would suggest that they be released by you as soon as possible."

(Exhibit 1389E)

Mr. Carroll (Dominion) again wrote to Mr. McCrea (Goodyear) on February 19, sending the usual copies:

"Referring to writer's letter dated 12th and your comments dated 18th instant, we would say that our current prices on sizes from 1" to 2" are out of line with costs and considerably lower than we should be quoting in Canada, taking into consideration current U.S. prices, plus 57.95%.

...

We would suggest that this hose item be given immediate attention as in our opinion an agreed upward revision should be released and made effective during the next few days."

(Exhibit 1389F)

On February 20, H. S. Pritchard (Dunlop), wrote to G. L. McCrea (Goodyear) again sending copies to the others interested:

"We have noticed with interest the comparative figures showing the lay-in of Insurance quality Fire Hose against our Canadian price structure, also the new prices suggested.

In the first place, the summary prepared by Mr. Carroll is on the basis of adding 22½%, 8%, 11% and 10% to the U.S. Jobber prices. We are not prepared on this or other items to consider the 10% Defence Tax as part of the laid down cost for the purpose of establishing selling prices in Canada.

Another point about this comparison is that our references show the Jobber in the U.S.A. is entitled to 20-10-10-10-5% discount in place of the 20-10-10-10% shown in Mr. Carroll's summary.

Attached herewith is a summary we have prepared showing the cost of American hose equivalent to our Reliance laid in on the basis of the American Jobber discount of 20-10-10-10-5% plus 22½% duty, 11% exchange and 8% Sales Tax, a consolidated premium of 46.85%.

We are also showing our present list prices on the various sizes of Reliance quality (the Dunlop equivalent of Insurance) Mill Fire Hose, also the proposed list prices on these sizes. . . .

(The attachment shows the following as suggested prices

1"	\$26.00
1½"	29.00
1¾"	33.00
2"	42.00
2½"	52.00)

For the purpose of getting our Canadian price differential between sizes in line with the differentials in effect in the States, you will note that in our proposed prices, the price the Jobber in

Canada will pay is approximately equal to the American Jobber's price plus 22½%, 11% and 8%. This we submit as a reasonable basis for establishing our price.

The increases proposed are not as high as those suggested in Mr. Carroll's letter but take in 1", 1½", 1¾" and 2" sizes. On the 2½" size our price has been definitely out of line on the high side and accordingly, we are proposing a reduction in this size to bring it in line with the policy referred to above in relation to American Jobber prices laid down in Canada.

...

After the interested parties have had an opportunity of re-viewing this proposal, we are hopeful you may see the wisdom of adopting same."

(Exhibit 1389H)

These prices were apparently acceptable to Goodyear and Gutta Percha because on February 24 Mr. Carroll (Dominion) wrote to Mr. McCrea (Goodyear) sending copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Nicholls (Goodyear):

"We have noted copy of Mr. H. S. Pritchard's letter to you dated 20th instant.

...

We are very agreeable to adopt price increases on Insurance (Dominion's brand) (or equal) Mill Fire Hose in sizes 1" to 2" and we will fit in with suggested revised prices on the above sizes as agreed to by all the interested Toronto Rubber Companies.

So far as 2½" size is concerned we are unable to agree with the suggestion made by Mr. Pritchard that current Dealer price should be reduced.

..."

(Exhibit 1389L)

The matter was finally settled at a meeting on March 17, 1941. Item 12 of the minutes of this meeting as prepared by Mr. McCrea (Goodyear) reads as follows:

"New Prices; Mill Fire Hose - page 62, Insurance, Trojan, Reliance and Style W:

1"	-	\$26.00	per	100	ft.
1¼"	-	29.00	"	"	"
1½"	-	33.00	"	"	"
2"	-	42.00	"	"	"
2½"	-	57.00	"	"	"

(Exhibit 1367)

The two examples given disclose a number of characteristic features of the method used by the Companies in arriving at common prices. In the first example, the agreed prices were announced simultaneously by all Companies. This was the rule because any company which gave dealers or customers advance price information would be at a competitive advantage, its trade being able to load up in the event of a coming price increase, or to postpone purchasing in the event of a prospective price decline. In the second example, negotiations regarding a price increase were concluded only after a meeting of company representatives. This was frequently the case either when the matter was complex or when differences of opinion could not be resolved by mail or telephone. The second example also indicates that the agreed prices were not based directly on costs of manufacture in Canada. An arbitrary element was introduced as an important determinant of the prices. This arbitrary element was an agreed formula applied to the prices of American goods so as to arrive at, in the words of Mr. Pritchard, "the laid down cost for the purpose of establishing selling prices in Canada." This formula was applied by the Companies in the course of establishing new prices for a considerable range of products.

When one of the Companies intended to bring out a new product or a substantial modification of an existing product, it was the practice for such company to secure the approval of the other companies for the prices it proposed to charge. This is illustrated in the following correspondence. On February 7, 1941 G. L. McCrea (Goodyear) wrote to J. M. S. Carroll (Dominion) with copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Nicholls (Goodyear):

"We are trying to work out a satisfactory hose to take the place of 1- $\frac{1}{2}$ " Linen Hose. . . .

. . .

We have been asked by a customer who is now on the Jobber list to quote them on a suitable hose.

We are suggesting a price of \$39.00 per hundred ft., less a Jobber's 10%, bringing their price to \$35.10 per hundred ft., Sales Tax included.

. . .

Our suggested selling price is based on 1- $\frac{1}{2}$ " x 3 ply Torrent Water Hose, which, of course, is a considerably heavier type (and also has a rubber cover on it) than the construction we are proposing to quote on.

. . .

I shall be very pleased to hear from you Monday, if possible, and trust that each one will be willing to accept our suggested price for the type of hose we intend to supply."

(Exhibit 1387A)

Mr. McCrea wrote again to Mr. Carroll and the others interested on February 11:

"Supplementing my letter of Feb. 7, I am amending the price shown in that letter but the price I am about to show is the one discussed and arranged on the telephone with all interested yesterday.

I have heard favorably from Mr. Carroll and he is in agreement with the others on the following price I am establishing.

This price will become effective on Thursday - Feb. 13:

1-1/2" x 2-braid, without rubber cover, Forestry Hose (to be sold for Forestry Hose use only) - \$35.10 per 100 ft., with 10% allowance to names on the 'J' List . . .

There is no Special Agent or other discount allowed and the above price is the lowest price that may be quoted.

. . .

Will each one kindly be guided accordingly? "

(Exhibit 1387B)

In order to ensure the uniformity of the price structure, it was frequently necessary for very detailed instructions regarding the method of calculating prices to be recorded in the work sheets. Because of the nature of the product, it was frequently not possible simply to record an agreed price beside the description of a product. A number of factors had often to be taken into consideration. An example of one of these factors was the surcharge applied to the supplying of certain types of hose in short lengths. An agreement was reached at a meeting of the Companies on May 16, 1947 as to the method of applying this surcharge. After the meeting, it was felt that some clarification of the rule was needed and on June 20 S. G. Nicholls (Goodyear) in a letter to G. Bergeron (Dominion), copies being sent to Messrs. Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), McCrea (Goodyear) and Davis (Goodyear), set out the arrangement as it was then to apply. The detailed nature of the pricing instructions frequently required is clearly evident in this illustration.

"Mr. Buchanan has gone to considerable trouble to clarify the matter of short length surcharges. To follow out this suggested plan, we are submitting a suggested revised Clause 16 (page 37), (in the work sheets) which would read as follows:

'Where Suction Hose of any type or grade is quoted, a surcharge of 15% is to be added to the net price for lengths from 5 to 8 ft. inclusive; lengths 3 ft. up to 5 ft., a surcharge of 20%; lengths under 3 ft. charge at the 3 ft. price, plus the 20% surcharge.' The following items are affected:

Page 25: Agricultural Suction Hose - Items 3,4,5 and 6.
 41: Acid Suction Hose
 41-43: Water Suction Hose (Smooth and Rough Bore)
 44: Fire Engine Suction Hose
 Oil Suction Hose - Single Wire Construction
 45: Oil Suction Hose - Double Wire Construction
 Vinegar Suction Hose
 S.B. Suction Hose for Portable Fire Equipment purposes.
 Page 45: Soft Suction Hose (Cancel present information at bottom of page)

Page 46: Rubber Flanges in Suction Hose - Use prices applicable for flanges on light ply construction (wire embedded) material conducting Hose, on page 54.

Page 53: Material Conducting Hose, wrapped ply construction - no wire.
 (a) Without flanges - Standard 10% cut length surcharge for lengths under 50 ft. as applicable to steam hose, water hose, etc., applies
 (b) With built-on Flanges -
 Lengths over 8' & under 50': 10% Cutting Surcharge
 " 5' to 8' inclusive : 15% " "
 " 3' and under 5' : 20% " "
 " less than 3' will be charged as 3' plus the 20% surcharge.

Page 54: Material Conducting Hose (wire embedded)
 Heavy Ply and Light Ply Construction -
 Lengths over 8' - No cutting surcharge
 Lengths 5' to 8' inclusive : 15% " "
 Lengths 3' and under 5' : 20% " "
 Lengths under 3' will be charged as 3' plus the 20% surcharge

Work Sheet Page 55: Rock Wool Insulating Hose
 56-57: Hose Coverings (Wire and Rope) - on short lengths, the surcharge as applicable on the type of Hose involved will apply.
 68: Vacuum Hose - Heavy and Light Constructions
 68A: Vacuum Hose - Heavy Industrial
 77: Suction Hose to C.N.R. Specification M-45.

On each of the above Work Sheet pages, against type of hose involved, notation is to be made:

'Short length' Surcharge - See Clause 16, page 37.

If all interested are agreeable, page 37 will be revised accordingly."

(Exhibit 1227)

H. S. Buchanan (Dunlop) replied on June 26, 1947 sending the usual copies:

"I have carefully checked over the program which you have lined up in connection with the above subject as per your letter of 20th June and as far as we are concerned we would be quite agreeable to adopting the ruling as outlined in your communication.

However before making a release to our selling organization we will await your official advice that the release is operative."

(Exhibit 1225)

The necessary changes were in fact later incorporated in the work sheets.

Other special regulations were concerned in part with a variety of work charges, agreed to by the Companies, which covered matters like the following:

- preparing the ends of belts for being made endless in the factory or on the job
- splicing belts in the field or in the factory
- stitching belting
- putting rubber cover on transmission belts
- punching bucket elevator belts
- punching holes in hog beater paddles
- cutting packing in non-standard sizes
- buffing the cover on brewers' hose
- stamping thread information on couplings
- attaching customer's couplings to hose
- plating couplings with nickel or chromium
- lettering mats
- regrounding rubber covered rolls
- removing old rubber from tanks, tank cars, etc.
- rental of equipment used in the field
- hourly rates, travelling and living expenses for expert technical assistance supplied by the Companies, in connection with splicing belts, lining tanks, etc., in the field

Another type of regulation limited the conditions under which certain work would be performed. Page 7 of the mechanical work book, dated August 25, 1947 records the following:

- "4. Belts will not be installed or made endless on the job, in grain elevators, and when quoting grain operators, elevator builders or contractors, it is understood we assume no responsibility for installation work of any kind."

On occasion, exceptions of limited importance occurred in the recording of prices in the work sheets. Some listed items had no price set beside them but were marked P.O.A. for "price on application". This situation sometimes arose in connection with items purchased for resale by the Companies when the supplying company withdrew its price list. It also arose in connection with a small number of products for which enquiries were

infrequently received. In such circumstances, the Companies would publish no list price for these products, simply making them P.O.A. as in the work sheets, but there is evidence to indicate that they would consult on the price to be quoted when inquiries were received. A further exception existed in respect of a few items which were marked "open" in the work sheets which meant that the prices of these products, for a time at least, were not subject to consultation.

As stated earlier, meetings of representatives of the head offices of the mechanical rubber goods manufacturers, have been held on an average of six or eight times per year for many years prior to the commencement of this investigation. It was at these meetings that any broad price revisions were decided upon, although prices of particular products were changed by agreement from time to time through correspondence circulated among the Companies between the dates of these meetings. This does not apply to the period of wartime price controls during which price ceilings were in effect. Consequently there is a hiatus of considerable length in the more recent history of the price agreements among the manufacturers of mechanical rubber goods. From the beginning of the war until the imposition of price controls in December 1941, however, the Companies' representatives held meetings on at least nine separate occasions as recorded in the minutes at which prices for various mechanical goods were changed. The dates of these meetings were:

June 3 and 4, 1940
October 29, 1940
December 17, 1940
March 17, 1941
May 30, 1941
June 25, 1941
July 30, 1941
August 25, 1941
September 29 to October 1, 1941.

Some of these meetings dealt with relatively few items and others adopted changes over a wide range of mechanical rubber goods items, In addition, during the period, the total changes effected by correspondence was substantial.

The prices of mechanical rubber goods were, of course, affected by the general price freeze of December 1941. The basic period prices remained remarkably constant throughout the war. Increased volume probably contributed materially to making any substantial price adjustments unnecessary. In July 1945, rubber manufacturers were permitted to negotiate their prices with motor vehicle manufacturers on custom built parts, though standard parts sold to such buyers were still under price control. Although strictly speaking, prices of mechanical rubber goods were decontrolled by stages, in effect, price ceilings on practically the entire range of mechanical rubber goods were suspended by Wartime Prices and Trade Board Order No. 642, effective July 8, 1946. The general intent of the Order was to release from price control those mechanical rubber products

used by industry, while retaining ceilings on those items used by domestic consumers. Thus price controls were no longer operative after July 8, 1946 on most kinds of packing, on belts and belting of all kinds, except fan belts for internal combustion engines, and F.H.P. belts for washing machines and refrigerators and on hose of all kinds except garden hose. Wartime Prices and Trade Board Order No. 684, effective January 13, 1947 released rubber weather-stripping, garden hose, floor mats and matting and baby carriage tiring. Wartime Prices and Trade Board Order No. 711, effective April 2, 1947 released any of the remaining classes of mechanical goods still under price control, except for a few small items - namely, fan belts for stationary gas engines of 6 H.P. and under, and accessories and fittings used for household heating equipment and for agricultural machinery. All price control on rubber goods was removed by Wartime Prices and Trade Board Order No. 757, effective September 15, 1947.

During the control period work sheets continued to be used as the final authority on prices, that is, within the ceilings established by the Wartime Prices and Trade Board. Following the principal decontrol order of July 1946, representatives of the mechanical rubber goods manufacturers attended at least eight meetings at which price changes, most of them increases, were agreed to. Again, only at some of these were changes made in the prices of a broad range of products. The dates of these meetings were:

August 23, 1946
November 7, 8, 11, 12 and 13, 1946
November 26 and 27, 1946
December 4, 1946
January 7 and 8, 1947
February 7, 1947
February 13 and 14, 1947
May 16, 1947

Miscellaneous documents indicate that meetings were held on August 25 and 26, 1947, on February 12, 1948 and on or about March 19, 1948 but no minutes, in the usual form at least, were received for such meetings. The practice and procedure relating to meetings appear to have been disrupted by reason of the commencement of this investigation, in a preliminary way, in July 1947.

Chapter 7 - Trade Lists and Discounts

The chapter on distribution referred to a number of different categories of customers. The buying position, that is, the discount if any from list price enjoyed by each of these categories was determined by agreement among the Companies to the extent that each was interested in the products purchased by any such category. Further, additions to or deletions from these trade lists were matters of joint decision by the Companies. A very large part of all the cooperative endeavours of the Group was concerned with the trade lists. Almost every meeting of the Companies or the Group devoted considerable time to the question of adding to or deleting names from the various lists. In addition, the correspondence is replete with discussions concerning modification of the discount structure, amending the lists, setting up new lists or cancelling old ones which no longer met the situation for which they were designed. The reason for this was that the ubiquitous nature of mechanical rubber goods required distribution to a large number of outlets to which new names were constantly being added and from which old names were constantly being removed. In the two categories of Jobbers and National Accounts together, for example, the lists contained the names of over 1,200 outlets, i.e. companies (including branches) in 1946, after an over-all revision had taken place which reduced the lists substantially. The work sheet system was employed in relation to this subject also, for the purpose of keeping all Companies in continuous agreement. The treatment of decisions relating to the trade lists differed in one important respect from the method of handling prices, in that very frequently meetings of branch managers were held in various centers across Canada for the purpose of making joint recommendations regarding changes in the lists to the head offices. The branch managers however, were excluded from giving consideration to certain of the lists. In all other respects, changes in the trade lists and discounts were brought about in the same fashion as changes in prices, that is, proposed changes were circulated, they were discussed in correspondence or at meetings, and if they were agreed to by all, Goodyear issued a clearance letter and released the change, thus making it effective.

In establishing a new category of buyer, qualifications required for recognition were agreed to by all the Companies concerned. The following letter, from G. L. McCrea (Goodyear) to Mr. Carroll (Dominion) with copies sent to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), and Nicholls (Goodyear), written on March 19, 1941 sets out qualifications which are typical of those required for listing.

"1-1/2" x 2-braid Forestry Hose

At the present time, our Dealer or Base price is \$35.10 per 100 ft. The Jobber price, less 10% from the above equals \$31.59 per 100 ft.

Confirming conversation to each on the telephone to-day, where a company will place an initial order for 50,000 ft. and repeat orders for not less than 10,000 ft. and where such a company buys for resale, it has been agreed that we will give them an extra 10% which will make the net price \$28.43 per 100 ft. These are Sales Tax included prices.

Any names that qualify under the 50,000 ft. initial order ruling must be listed. For the present the name of Watson Jack - Montreal qualifies and is now listed. This company is in a position to place at once an order for 50,000 ft.

This ruling will be effective on Thursday - Mar. 20.

We understand, of course, that Watson Jack will quote on exactly the same basis as the rubber companies quote and they will not quote the Provincial Governments any lower than the Jobber price, which is \$31.59 per 100 ft.

We may all quote the Provincial Governments \$31.59 per 100 ft. and this Jobber price would apply to names on the 'J' List."

(Exhibit 1387C)

It cannot be said that the trade lists were in fact handled in a very arbitrary or discriminatory manner because firms which qualified according to the requirements established by the Companies for listing, were usually able to obtain the same favoured buying position as already listed companies. The nature of the joint action taken, is illustrated by the following examples which also illustrate, however, the potentiality for abuse that existed in such arrangements. On June 13, 1941 G. L. McCrea wrote to Mr. Carroll, sending copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Nicholls (Goodyear):

"Saskatoon Managers' Meeting of June 3.

Referring to Mr. Scott's letter and also to the Minutes, it seems to me that we should be careful about the adding of names, especially to the Endless Thresher Belt Preferred List.

We do not think it advisable to add the Saskatchewan Co-Op. Wholesale Society to either the 'J' list or the Endless Thresher Belt Preferred list, even though this has been recommended by the Saskatoon managers.

It seems to me that these co-operative buying groups will pass on to other members some of the advantages of their having a lower price than a number of dealers that would not be associated with the Saskatchewan Co-Op. Wholesale Society.

..."

(Exhibit 1362B)

H. S. Pritchard replied on June 14, sending the usual copies:

"..."

In regard to adding the Saskatchewan Co-operative Wholesale Society Limited, Saskatoon, and the General Automotive Supplies, Saskatoon to the 'J' List and the Endless Thresher Belt Preferred List, we have written our Division Manager further in regard to

these accounts, as we feel like yourself, that we should proceed very carefully with the adding of names to the 'J' and Endless Thresher Belt Preferred List. . . ."

(Exhibit 1362C)

On June 17 J.M.S. Carroll wrote to G.L. McCrea with copies to the others interested:

" . . .

Regarding name of Saskatchewan Co-operative Wholesale Society Limited, Saskatoon, we will have no objection to addition of their name to the Mechanical 'J' List also to the Endless Thresher Preferred List, providing the other interested Toronto parties are in agreement that this procedure should be followed.

We have noted however from your letter dated 13th instant and also from Mr. Pritchard's letter dated 14th instant that there is more or less doubt as to whether or not name of Saskatchewan Co-operative Wholesale Society Limited should be added to the above Classified Lists.

We believe it may be as well to defer final decision of the above name until our next Toronto Mechanical Meeting so that we will be able to discuss this item in further detail."

(Exhibit 1362D)

The minutes of a meeting held on June 25, 1941 record a decision by those present to refer the recommendations of the Saskatoon meeting back to the branch representatives for reconsideration.

Again, on December 11, 1946 G. V. Davis (Goodyear) wrote to G. Bergeron (Dominion) sending the usual copies:

" . . .

The writer was at Akron last week and the Export Department are very anxious that this name (Barber-Green) be placed on the approved Canadian List. Mr. Bradley, of the Export Department, advised me that these people get O.E.M. Prices in every other country but Canada, and while he doesn't expect they will be buying much for the Canadian market, he feels that Akron must have them approved.

Will the interested parties please let me have their comments quickly."

(Exhibit 1169A)

~~Barber-Green~~ was in fact added to the Conveyor Equipment Manufacturers' List at a meeting of Company representatives on January 7 and 8, 1947.

The fact remains, nevertheless, that rarely could a buyer who was refused the advantageous price he was seeking, by one of the Companies, hope to get it from any other. Any one of the Companies which felt that the circumstances warranted an additional discount to a particular buyer was committed not to grant it without the consent of the other Companies. Any listed accounts which spread their purchases among two or more of the Companies were nevertheless in a position to buy on more favourable terms than a smaller unlisted buyer, who by concentrating his purchases, might buy more from a single supplier than did the listed accounts. The discounts therefore did not necessarily reflect cost savings due to volume purchases.

In the oral evidence before the Commission, emphasis was placed upon the frequent exercise of independent action. The evidence does indicate that strong differences of opinion occasionally arose on various matters. However, the occasions, specifically indicated in the evidence, on which such differences were not resolved by mutual concessions by the Companies to preserve the over all agreement are not common. The following correspondence concerned with the establishing of a special list of Terminal Grain Elevator Contractors, illustrates the attitude that prevailed. Special lists were set up on occasion to take care of particular situations, sometimes large construction projects. On February 20, 1941 G. V. Davis (Goodyear) wrote to E. C. McConnell, Goodyear's Branch Manager in Winnipeg:

"A price authority is going to your branch to-day listing the following as Terminal Grain Elevator Builders who will receive 5% better than book on grain belting bought for original equipment:

Carter-Halls-Aldinger Co. Ltd.	-	Winnipeg,
Barnett-McQueen Co. Ltd.	-	Fort William,
Bird Construction, Ltd.	-	Winnipeg,
Bennett & White, Ltd.	-	Calgary,
Fegles Construction Co.	-	Minneapolis, . . .

Other names that qualify may be added to this list but we are not at liberty to quote them this extra 5% until the names have been formally listed by the Head Offices of the rubber companies.

I notice by the first paragraph of your letter that you mention P. Leach as contractor for the Searle addition. This name has not been listed for no-one knows anything about this construction company. If P. Leach is a construction man and is going to build terminal additions, then you will have to have him listed in the regular way before you can quote him the extra 5%.

The above also applies to McCabe Grain Company. As elevator owners, they are not and will not be entitled to the 5% but if they build their terminal as the McCabe Construction Company, then they will also have to be listed as contractors.

. . ."

(Exhibit 1086A)

Mr. McConnell was apparently very anxious to have the McCabe company listed and on February 28, 1941 G. L. McCrea (Goodyear) wrote to him, further explaining the situation:

"You haven't quite the correct idea on McCabe. Perhaps I failed to make it as clear to you on the telephone as I should have done.

There is no ganging up on us by the industry. One of the companies checked into the McCabe Construction Company and they could not find any record of this company being in existence. They then telephoned their Winnipeg branch and were told that they had not heard about any McCabe Construction Company but they knew about a McCabe Elevator Company and I was asked to cancel the recommendation and hold it up for further discussion.

The company calling this to my attention asked me to contact with the others. The other two companies did not telephone but it was I who telephoned them and gave them the circumstances. They agreed that if the McCabe Construction was not a legitimate construction company, they should not be added.

. . .

While it may be your opinion that we are not looking after our own or our customers' interests in not listing McCabe, I can appreciate your opinion because you want this business and you want to serve one of our good customers; but one must have logic back of his reasoning before he can get the industry to agree to a listing. The only sound logic is if an account we want listed is a builder of elevators, not simply for his own use exclusively but is in the elevator building business.

Of course, if you can get the other companies to recommend McCabe, I don't believe the Head Offices will turn down the recommendation. In fact, it would strengthen our hand as far as McCabe is concerned if the recommendation were put through; but you cannot expect me to force the issue of listing a name that is favorable to us unless that name legitimately qualifies.

The three other companies, when a name does not qualify, say 'Not in favor' and we do not usually say 'We are going to quote that account whether you like it or not', for that is not our attitude towards our competitors and it is not their attitude towards us."

(Exhibit 1087)

When the documentary evidence discloses that independent action was taken by one of the Companies in granting a discount contrary to agreement, it also discloses that every effort was commonly made to keep it secret from the other manufacturers. Such cases therefore do not confirm the statements made by several witnesses at the hearings before the Commission, that they did not feel bound by any agreements, that they felt free to add independently any names they wished to any of the lists and that in fact they frequently did so. Pertinent in this connection are the following extracts from correspondence originating with Dunlop dealing with concessions made to a customer, Fleck Bros., Ltd., in Vancouver.

On September 15, 1937 G. H. Tiernan, Dunlop's Branch Manager in Vancouver, wrote in part to D. E. Rogerson, Western Sales Supervisor for Dunlop, sending a copy to H. S. Pritchard (Dunlop):

"CONVEYOR BELT DISCOUNTS
FLECK BROS. LTD.

For your information it is absolutely imperative that we follow up Head Office in connection with our request that this concern should have a protection on Conveyors.

They have recently purchased from the #5 Company, U.S.A. \$1,500 worth of Conveyor Belts and more in sight. . . .

We can absolutely guarantee that there will be no possibility of any other Rubber Company knowing what we are doing . . ."

(Exhibit 1448)

By "a protection" was meant a jobber discount which would be contrary to an industry agreement to the effect that such belting would not be sold through jobbers.

After some further correspondence on the matter, H. S. Pritchard wrote D. E. Rogerson on November 11, 1937 sending copies to J. E. Jones, General Sales Manager of Dunlop and to the branch office in Vancouver:

". . . I again wish to point out the importance of not making any arrangement with Fleck Bros., which will upset relations in the merchandising of our general mechanical lines. . . .

You are fully acquainted with the importance to our Company of maintaining our agreement in the merchandising of rubber goods, and also know Head Office policy in this regard. It is just possible that after you have weighed these various factors, you may feel it desirable to give up any thought of providing the protection for Fleck Bros. . . ."

(Exhibit 1447)

On February 1, 1938 H. S. Buchanan (Dunlop) wrote to J. E. Jones, explaining the arrangement which had been decided upon and sent copies to D. E. Rogerson and H. S. Pritchard:

" . . .

If Fleck Bros. are definitely responsible for our receiving conveyor orders, we will contribute to their sales expense involved to the extent of 5% of our invoice value on each individual item. Credit to Fleck Bros. will be handled by Head Office on receipt of details of each transaction; such details are to be sent to Mr. H. S. Pritchard, and no one at Vancouver Branch should be 'in the know' except Tiernan.

It was emphasized to Mr. Rogerson that there must be no deviation from this arrangement. In other words, there must be no short circuiting that would involve us in any embarrassment."

(Exhibit 1480W)

On the same day H. S. Pritchard wrote in part to D. E. Rogerson, sending a copy of his letter to J. E. Jones:

" . . . As mentioned in my previous letters to you on this subject, it is most important that our dealings with Fleck Bros., in regard to conveyor belting be handled only as outlined in Mr. Buchanan's letter, both in spirit as well as fact. It is your responsibility, therefore, to impress upon Tiernan the importance of these instructions being closely followed as failure to follow them would undoubtedly bring a reaction from the industry which would be most regrettable.

. . ."

(Exhibit 1480U)

Despite these precautions, Fleck Bros. subsequently advertised conveyor belting in their catalogue, and because it had been agreed by the Companies, as above indicated, that conveyor belting would be sold only to consumers or to original equipment manufacturers, one of the Companies complained of this to Dunlop and of two or three instances in which Fleck Bros. were said to have sold conveyor belting. On March 10, 1939 J. E. Jones wrote to D. E. Rogerson, reviewing the correspondence on Fleck Bros. and concluding:

" . . .

Now, it is extremely important that this situation be clarified and the detail of it worked smoothly. I know that Fleck would not stand for anything that would embarrass us and I do not think Tiernan should stand for anything that would embarrass us, either.

I am just a little worried about conveyor belting appearing in Fleck's catalogue. Frankly, to the other rubber companies it

doesn't look as if he would be listing the conveyor line and not be in a position to sell it.

In a recent letter I told you how important it is that we keep this Mechanical set-up in proper alignment. It is important to the Company, it is important to you, to Tiernan and me as individuals and we must receive thorough co-operation.

While we are on this subject I think it would be well to call for a complete review of anything in the Mechanical set-up that is not 100% on the line. I think you should know and I think I should know for our own, confidential information, just where we stand.

As I said before, Tiernan must absolutely understand that he has to maintain our prescribed policies. We will be interested, therefore, in having your assurance that the Fleck situation is definitely, thoroughly understood and all details lived up to as to method of handling.

Secondly, we will be anxious to have your itemized line-up of any Mechanical business that is not 100% on the line.

In other words, we want to know what the off-side details are and to what extent the Company is involved. This is important."

(Exhibit 1446)

Fleck Bros. later became involved in the merchandising of another product in a manner which also did not accord with the agreement among the Companies. On October 3, 1939 H. S. Buchanan wrote to G. H. Tiernan, sending a copy to D. E. Rogerson:

"... this is the first intimation that the writer has had that Fleck Bros. receive any consideration whatsoever on the sale of Fire Hose. According to the set-up, there is no provision for any protection for even special accounts, let alone a jobber and I would say that our position would be decidedly embarrassing were it to become known to the opposition that Fleck Bros. were in a position to handle our Corporation Fire Hose. As you already know, some attention has been directed toward Fleck's activities on N.J. Lines and sooner or later, if we don't watch our step, there is going to be a showdown and the result may be very far reaching and possibly quite detrimental to ourselves. You know it is so easy to waive a point on some one transaction whether it be Fire Hose or any other N.J. line, and once this is done you establish a precedent and Fleck Bros. probably feel that they are entitled to actively solicit business covering such lines and there can only be one result - that is, sooner or later it is going to come to the attention of the opposition and we are going to be asked to explain.

..."

(Exhibit 1441)

Correspondence within the Dunlop company on the subject of the selling activities of Fleck Bros. reached considerable proportions as indicated by the above quotations. However, after the following letter dated February 22, 1940 was sent by D. E. Rogerson to G. H. Tiernan, the subject appears to have ceased to be an issue:

"It has been a recognized and definite practice over a period of years that conveyor belts would not be sold through jobbing houses, and it has been drawn to my attention that in spite of these instructions, which are very clearly defined in our programme and adhered to by all Branches save Vancouver, that we continue to charge Fleck Bros. and they in turn are selling Conveyor belts to the smaller Mine properties, and the inference is, of course, that we are subsidizing them, or rather that he is not handling it for nothing. There is a growing feeling among the opposition that Fleck are actively soliciting conveyor belts wherever their travellers go, and this cannot continue without leading us into trouble. Now we are going to have one policy-- We co-operate with Fleck 100% on our general lines but we are not going to leave any room for question by the opposition on our dealings with Fleck. . . .

Now, just in closing, there likewise appears a growing feeling that not all mechanical business in Vancouver is on the up-and-up and that corners are being turned, and this is probably a good time to clear this point also. There is a recognized Jobbers' List, and there is one basis of selling. This Company is altogether too much involved to permit of any one individual or Branch turning corners that are likely to react unfavorably, so you had better make absolutely certain that all your quotations and billings so far as mechanical goods are concerned will bear the closest investigation, because I can tell you quite frankly that if there is anything wrong and it leads or precipitates any unfavorable conditions, there will be only one course open,"

(Exhibit 1444)

As was previously pointed out, and as is made clear by the above correspondence, not all products were treated the same way with respect to distribution or the amount of discount allowed from list price. A large number of products in the work sheets were marked "NJ", standing for no jobber discount. Conveyor belting was one such product in the general line of mechanical rubber goods which received special treatment. G. V. Davis summarized the method of merchandising conveyor belting as follows, in a letter of September 20, 1946 to Goodyear's Manager of Mechanical Goods in England:

"In Canada, we sell Conveyor Belting on a basis of one price to everybody with one exception. We have a list of Conveyor Equipment manufacturers who receive a 10% Sales Commission on Conveyor Belting they sell for original equipment. This list includes such names as Link-Belt Limited, Stephens-Adamson Mfg. Company, Jeffrey Mfg. Co. Ltd. etc.

In order to receive this 10% Commission, all names must be approved by the four Canadian Rubber Companies manufacturing Mechanical Rubber Goods. (Goodrich did not manufacture conveyor belting)

..."

(Exhibit 1092)

From the foregoing it is apparent that the arrangements restricting the channels of distribution bore more heavily upon some products than upon others. The result was a pattern of distribution which bore no necessary relation to the pattern which would have existed, had each company been free to set its own standards in appointing distributors of various products and in setting discounts. Associated with this is the fact that the different categories of buyers bore a particular relation to each other price-wise, at any one time, because their respective discounts had been so set by the Companies. This relationship, again, did not necessarily reflect the relationship which would have existed had there been no agreement.

The system of collaboration outlined above was continued during the period of controls, with however, considerable limitations. Price control meant that a customer was entitled to receive a net price no higher than he had enjoyed during the base period in 1941, except in so far as increases were authorized by the Wartime Prices and Trade Board. The effect of price control therefore was that a customer could not be moved from a higher to a lower discount class unless higher prices had been authorized by the price control authorities. Likewise, the discount accorded any trade classification could not be reduced except under the same circumstances.

There was nevertheless a fairly wide area within which the agreement continued to be operative and decisions continued to be made effective. That it was still necessary to secure the joint approval of the Companies, before it was permissible to quote a customer a higher discount during the period of controls, is clearly set out in a letter written May 3, 1944 by G. L. McCrea (Goodyear) to H. E. Langdon, the western Sales Manager of the Mechanical Rubber Goods Division of the American Goodyear company in Akron, Ohio, in reply to the latter's request that special consideration be given one account:

"..."

I may say that our methods of distribution in Canada are entirely different from Akron's and while I like their distribution set-up, we have for a great many years been working along entirely different lines. The rubber companies of Canada have been co-operating very closely in the matter of sales plans.

The rubber companies for a very long time have been going direct to the larger users and our set-up does not make provision for jobbers or distributors, such as you have in the United States. The only Jobber discount that we quote is 10% from the Dealer price; and strange as it may seem to you, this Jobber 10% is very often extended to some larger users.

In working with the industry in Canada, we are bound by certain conditions that at times prove somewhat irritating; but over a great number of years and over the entire line of mechanical rubber goods, these conditions are only changed by general consent. All decisions are really industry decisions.

I am saying this very frankly to you in a very personal and confidential way. It is a subject that we do not discuss with our trade. You will understand the reasons for our not wanting to discuss it with folk not in our own organization.

. . .

I am . . . attaching copy, for your own information, of course, of our industrial Work Sheet Page 3-B; and while it is dated Feb. 11, 1944, you will notice that as far back as June 12, 1941, we arranged for a special concession of 10% for the Cincinnati Butchers' Supply of Cincinnati, and their distributor - Philip Gies Foundry Co. Ltd. - Kitchener.

. . .

I am sure that the other companies would not want us to quote a larger discount than the 10% and I hardly think that so small a concession would be of any interest to the Cincinnati Butchers' Supply Company or their agent, Philip Gies.

. . .

Under our system of merchandising, I do not believe that we could work out an arrangement that would be satisfactory to the industry and to the Cincinnati Butchers' Supply Company. . . .

. . ."

(Exhibit 1055)

During this period, the pattern established prior to controls was followed not only with respect to securing the approval of all Companies for the addition of particular customers to appropriate lists, and for the quoting of special discounts in certain circumstances, but also for the establishing of new trade lists. Certain lists were set up purely as a wartime measure. There was for example, what was called the War Supply Special List, which was a list of companies to which fire hose could be sold at the same price as hose sold to the Department of Munitions and Supply. Other lists however were set up on a more enduring basis. An example of the latter is recorded in the minutes of a meeting held on March 15, 1946 which were prepared by G. L. McCrea. The meeting was attended by Messrs. Larsen (Gutta Percha), Scott (Gutta Percha), Coon (Gutta Percha), Fritchard (Dunlop), Buchanan (Dunlop), Bergeron (Dominion), Dunn (Dominion), McCrea (Goodyear) and Davis (Goodyear). The minutes are in part as follows:

- "(1) It was decided after a thorough review to set up a list of portable conveyor equipment manufacturers purchasing belts for portable conveyors under the following conditions:

- (a) 5% discount allowed to listed names only.
- (b) Minimum quantity - 250 ft., to be taken in one shipment and to be same width, plies and quality.
- (c) Discount applies on conveyors up to and including 18" width.
- (d) List of names to be dealt with by Head Office only and not by Branch Managers.
- (e) Adopted List:
 - Portable Machinery Sales - Toronto, Ont.
 - Elcombe Engineering, Ltd. - Windsor, Ont.
 - Essex Sales Co. - Windsor, Ont.
 - Mussen's Canada, Ltd. - Montreal, Que., and Toronto, Ont.

. . ."

(Exhibit 1278A)

This list and the above qualifications were incorporated into work sheet page 144, dated March 18, 1946 which had been amended but not made obsolete when the work sheets were received by the Commission in 1949. A discussion of the policies adopted by the Companies respecting discounts and trade lists at the termination of wartime controls is contained in the Chapter on Post-War Planning.

Chapter 8 - Tenders

As is to be expected in a manufacturing field so closely linked to industry in general and particularly to construction and mining enterprises, tenders play an important part in the merchandising of certain mechanical rubber goods. The Companies have adopted policies in line with their general cooperative sales programs, to deal with tenders for contracts.

Frequently calls for tenders were received by the branch offices of the Companies. This was particularly true in Ontario and Quebec where much of the heavy type of operation, on which tenders for mechanical rubber goods are most common, is carried on. In some cases where tenders were called for with some frequency, the Companies have established prices which are recognized by all as being applicable to the particular customer for the type of enquiry received. These established prices might be in the form of special net prices which had been agreed to on some past enquiry, or they might be a recognized discount from book or list prices.

The method of dealing with requests for tenders depended on the particular circumstances. Sometimes the prices had become so well recognized that only the branches where the enquiry was received consulted together and confirmed the price to be quoted. In other cases, the branches referred the enquiry to the head offices, where if it were agreed that the usual price would again be quoted, a release was issued to the other head offices by Goodyear, by letter or telephone, and they were then free to advise their respective branches to quote as directed.

Frequently it was necessary for the Companies only to agree on the grade or quality of the product to be quoted, for example, an agreement to quote on "Style B" and equal grades of conveyor belting would result in identical bids, because the price for this grade is established and recognized by all the Companies. Under some circumstances it was necessary for the head offices to work out a schedule of prices at meetings, by letter or telephone before the clearance letter could be issued.

Evidence of the care exercised by the Companies to ensure uniformity of prices in quotations is shown in the following extracts from three letters which deal with a request for tenders from the Quebec Harbour Board. On March 18, 1937 G. L. McCrea (Goodyear) wrote to the Montreal Branch Manager of Goodyear as follows:

" . . .

3. I made it clear to Geo. Davis today that the figures you are to use have been checked three ways at Toronto and that I also telephoned Mr. Carroll and he agreed to use the same figures, so there ought to be no chance of a mix-up in the matter of quoting.

4. I am attaching, herewith, copy of a letter that I wrote to Mr. Carroll so you will have the correct figures to use in connection with your quotation.

. . ."

(Exhibit 1064A)

The attachment, addressed to J. M. S. Carroll (Dominion), with copies to Messrs. Scott (Gutta Percha), Buchanan (Dunlop), Fritchard (Dunlop), Barton (Goodyear) and Nicholls (Goodyear) reads in part:

" . . .

The following prices have been checked with Messrs. Buchanan and Scott and I telephoned you (Mr. Carroll) today the basis on which we were quoting and you will use the following figures when quoting on this belting:

. . .

These prices are in effect on receipt of this letter."

(Exhibit 1064B)

On March 19, Mr. Carroll replied:

" . . .

We have released to our Montreal Branch the agreed prices as quoted in your letter received here to-day.

We have also asked our Montreal Manager to check these agreed prices with other interested Montreal Managers before releasing same."

(Exhibit 1064C)

Further evidence of such care is indicated in the following correspondence. On July 7, 1947 H. S. Buchanan (Dunlop) wrote to S. G. Nicholls (Goodyear), sending copies to Messrs. Davis (Goodyear), McCrea (Goodyear), Larsen (Gutta Percha), Dawson (Gutta Percha), Bergeron (Dominion), Dunn (Dominion), Hawkins (Goodrich) and Pritchard (Dunlop):

"We are in receipt of a Tender request . . . dated July 3rd which originated from the Department of Transport, Office of the General Purchasing Agent which specifies the following:

'80-50 ft lgths Fire Hcse - Standard Hydrant type 2 $\frac{1}{2}$ "
Underwriters' Rubber Lined Double Jacket Linen with E.R.
Couplings attached Rocker Lug.'

. . .

We are assuming that the reference to 'Rubber Lined Double Jacket Linen is an incorrect description and they have in mind Double Jacket Cotton Rubber Lined Fire Hose that will pass Underwriters' specifications.

Inasmuch as according to my understanding any Corporation Double Jacket Fire Hose manufactured by Canadian Manufacturers will pass Underwriters' specifications, it is my suggestion that we quote on our cheapest quality (it would be optional if any Company wanted to quote on the higher grade) Double Jacket Corporation Fire Hose which is \$1.50 per ft, sales tax included, and which would be F.O.B. Montreal.

. . .

On receipt of this letter would each Company indicate to Mr. Nicholls that the foregoing procedure of handling this inquiry meets with their approval and if all are in agreement I would suggest that Mr. Nicholls advise each Company that it is in order to tender on the basis we have suggested.

. . .

(Hand-written note, this being Gutta Percha's copy) Spoke to Peter Dawson. Decided let our quote stand - same as Gyear & Dunlop. 9/7 C N L"

(Exhibit 1223)

S. G. Nicholls (Goodyear) on July 9, 1947 wrote to G. L. McCrea (Goodyear) sending a copy to G. V. Davis (Goodyear):

" . . .

Yesterday we were in telephone conversation with Mr. Dunn and asked him the basis they had quoted on the above tender. The information that he telephoned this morning is as follows:

Fire Hose

4000 ft. - 80 - 50 ft. lengths, Underwriters' Single Jacket, Boston $2\frac{1}{2}$ " coupled @ .88 ft.

. . . Net \$3,259.52

Keystone - Double Jacket, $2\frac{1}{2}$ " coupled @ 1.75 ft.

. . . Net \$6,482.00

Superflex-Double Jacket, $2\frac{1}{2}$ " coupled @ 1.50 ft.

. . . Net \$5,556.00

. . .

This information has been given to Mr. Buchanan and Mr. Dawson and it is quite likely they will adopt similar quotation."

(Exhibit 1093B)

Also on July 9, 1947 G. V. Davis wrote to Goodyear's Montreal Branch sending a copy to S. G. Nicholls:

"Confirming telephone conversation this morning and supplementing our letter of July 8th on the above subject we give below information with regard to price on different types of hose and we suggest you tender on this basis. (Prices shown are identical with those listed in Exhibit 1093B)

. . ."

(Exhibit 1093A)

Despite the efforts made by the Companies to arrive at identical bids, errors crept into their quotations from time to time. The evidence indicates that in such circumstances, the Companies took steps to assure each other that there was no intentional breach of the agreement, and that care would be taken to avoid the recurrence of such mistakes in the future. The following correspondence illustrates this point. On June 24, 1940 G. L. McCrea (Goodyear) wrote to J.M.S. Carroll (Dominion) sending copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Nicholls (Goodyear):

"It has been reported to us that some companies had lower prices than others on the belt for the National Harbor Board - Halifax.

. . .

Will you kindly let me know if you were successful in securing this order and also kindly check the price to see that it is in accord with the prices outlined above for this particular belt?

I checked this with Mr. Buchanan and their prices are as outlined above."

(Exhibit 1401A)

On July 8, 1940 W. J. Scott (Gutta Percha) replied, sending copies to the others interested:

"Upon receipt of copy of your letter to Mr. Carroll of June 24th with reference to a quotation made to the National Harbours Board, Halifax, . . . we wrote to our Halifax Office for a copy of their

quotation which we received on Saturday last and apparently our Halifax people believed that they had quoted correctly. However, when we checked this quotation we found that they had used a wrong list price . . . We were all ready to reply to the letter calling their attention to the error when we received this morning a further letter from them in which they state that they have since discovered their error.

As you know there is no list price printed for a size between 22" and 24" and the party who made the quotation in our Halifax Office made the mistake in using a price which would cover a 23" belt instead of carrying their figuring further to arrive at a price that would be halfway between 23" already obtained and the 24" list.

This is an unfortunate mistake but it was purely unintentional, caused by careless estimating of a proper list price. Naturally we are writing to our Halifax people pointing out the necessity of having these prices checked very carefully before using them especially when they are endeavouring to make a list price covering a size not regularly listed.

While we have no thought of excusing our blunder it does seem strange that our customer reported to us that the price quoted by the Dominion and ourselves was identical so it would seem that the Dominion made an error similar to our own; and while of course this does not excuse us in any way we thought well to mention it to give Mr. Carroll an opportunity of checking up with his own people."

(Exhibit 1401C)

J.M.S. Carroll had replied on July 2, 1940 confirming that Dominion's quotation was in accord with the agreed figure, but he wrote a second letter to G. L. McCrea (Goodyear) on July 10, sending copies to the others interested, which read as follows:

"Since writing to you on 2nd instant we have been advised by our Halifax Branch that they discovered an error in the first quotation they made against recent enquiry from the above Customer.

They further stated that the error in the list price was noted very quickly and Mr. Hendry, the Port Manager, was contacted immediately and a revised corrected quotation was submitted and the old quotation with incorrect list price was destroyed.

Trusting the foregoing information will be found satisfactory and regretting the error on the part of our Halifax Branch which, however, was subsequently corrected as noted above."

(Exhibit 1401D)

Because many mechanical rubber goods are highly engineered products, that is, they have to be modified to a greater or lesser degree, or chosen with great care, to fit the operating conditions under which they will be used, price is not always the paramount consideration for the buyer in making his purchase. This is particularly true of products bought by the method of calling for tenders, because frequently in such cases the mechanical rubber goods have to operate in more or less unique installations or under peculiar conditions of service. Consequently, compliance with exact specifications, or willingness to provide a guarantee of satisfactory service, or, because delay may keep an important unit or operation idle, ability to guarantee delivery may over-ride the price differential as the most important element in the tender. These matters therefore, together with price and the ordinary conditions of sale, were all subject to consultation and agreement by the Companies before individual tenders were released for quoting.

An understanding of the close attention paid by the Group to these subsidiary matters may be gained from reading an exchange of correspondence between some of the Companies which occurred in late 1946 as a result of requests for tenders sent out by the Montreal, Quebec and Halifax Harbour Commissions. On November 13, 1946 H. S. Buchanan (Dunlop) wrote as follows to Messrs. McCrea (Goodyear), Bergeron (Dominion) and Coon (Gutta Percha):

"We are attaching hereto a copy of the figures which we have prepared covering the inquiry for prices on Terminal Grain Elevator Belting for Montreal Harbour Commission.

These prices are computed on the new discount as set up for first quality Grain Elevator Belting at 53% for Rubber Covered Belts (1/40" Rubber Cover) and 53 and 5% for Friction Surface Belts.

The understanding is that our quotation will be dated November 19th, 1946."

(Exhibit 1070)

The following is an extract from the minutes of a meeting held in Toronto from November 7 to 13:

"Quotations for Halifax, Quebec and Montreal Harbour Boards were cleared and forwarded to Branches for quoting, based on the new prices in effect on November 18th."

(Exhibit 1177)

On November 14, H. S. Fritchard (Dunlop) wrote to Messrs. McCrea (Goodyear), Dunn (Dominion), Bergeron (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha) and Davis (Goodyear) amplifying Mr. Buchanan's letter:

"There are several points which we discussed at our recent meeting in regard to quotations to the above concerns (Montreal, Quebec and Halifax Harbour Commissions) which I feel it is advisable to put in writing.

It is our understanding that we are all prepared to meet the 18 pound friction pull test specified in one of this inquiries.

No one is to quote better than three to four months' delivery.

We are not prepared to give any specific guarantees other than those currently considered standard, i.e. we will stand behind our respective products for workmanship and materials.

. . ."

(Exhibit 1180B)

C. N. Larsen replied on November 15, 1946 in a letter written to G. L. McCrea and the others interested:

" . . . it is also our understanding that we are prepared to meet the 18 lb. friction pull in our first quality Grain Belting.

We also approve the suggestion that no-one quote better delivery on these three enquiries than three to four months after receipt of order.

We are not prepared to give any specified time guarantee on this belting. The specifications attached to the Quebec and Halifax enquiries call for a one-year guarantee against blistering and ply separation and opening at the seams. These specifications, therefore, we shall ignore.

. . ."

(Exhibit 1180A)

Agreement having been reached, G. V. Davis (Goodyear) wrote to J. W. Wright, Goodyear's Montreal Branch Manager on November 18:

"As requested in your letter of November 7th, we are attaching hereto all necessary information and price set-up in connection with this enquiry. (Montreal Harbour Board)

This price was prepared during our meetings here in Toronto and has been cleared by all concerned. . . .

. . .

We are not prepared to give any specified time guarantee on this belting and our Standard Warranty only applies, . . .

. . .

We have disregarded entirely customer's requests for delivery and our quotations are to bear a delivery date of from three to four months, on any belts purchased from us, after receipt of order."

(Exhibit 1069)

The evidence generally discloses little friction among the Companies in the matter of their agreements relating to tenders. However, some instances of friction did occur and one is expressly referred to in a letter written on March 31, 1939 by G. B. Rutherford (Dominion) to G. W. Charles, then Sales Manager of the Mechanical Division of Dominion:

"Montreal Branch received enquiry for price on rubber lining a steel tank from Brown Corporation on March 18th . . . Our rubber lining set-up with the other companies provides for an agreed price of \$24.00 each for rubber lining of large openings but these openings were so unusually large that we knew at once that it would not be a profitable proposition to quote the \$24.00 figure. We estimated then on an area basis and found that one of these openings would take a price of approximately \$75.00 and another \$100.00.

Knowing that our competitors could, according to the ruling in our lining set-up, quote a \$24.00 figure, we 'phoned the local Goodrich office on March 22nd and, without mentioning the Brown Corporation name, told them we had an enquiry for a cylindrical tank with unusually large openings. They advised that they had not such an enquiry on hand but agreed that if enquiry was received they would check with us for our figures. To be doubly safe, and in the event that the enquiry might have gone direct to Kitchener, we 'phoned the Goodrich office there the same day and again were told that they had not received the enquiry but that they would get in touch with us if it came.

. . .

On March 25th the local Goodrich office 'phoned to say they had the enquiry and they were given our figure of \$1,493.80. We were told that the figure they had arrived at was \$1,270.00.

On March 27th the local Goodrich office 'phoned again, stating that they could not make out how we had arrived at our figure and, at that time, we gave them a complete schedule of the area figures we had used in arriving at our price.

The next we heard of this deal was in another 'phone call from the local Goodrich office on the 29th, when we were told

that the Goodrich office had quoted a figure of \$1,356.35 (against our \$1,493.80). We asked if it was possible that this figure be withheld but this was not possible. We then 'phoned the Kitchener office to find out why this price had been quoted . . .

Next, we had a 'phone call again from the local Goodrich office the same day and, discussing this job, found that the local representative had apparently gone to La Tuque on Monday, the 27th, had quoted the figure there to Brown Corporation on Tuesday, the 28th, and returned to Montreal on the 29th to advise us of their lower quotation.

We told them that, of course, we were going to meet their figure of \$1,356.35 and this we did by telephone on the 29th.

We consider that we went out of our way to do everything possible to prevent any slip-up in quoting on this job and consider that the action of the Goodrich Company constituted a breach of the agreement."

(Exhibit 1498C)

The circumstances of this quotation were apparently discussed with the President of the Company, W. A. Eden, whose letter to G. W. Sawin, President of Goodrich, on April 3, 1939 setting out the details of the complaint began with the following paragraph:

"I find another case where your Rubber-to-Metal Department has used bad faith. You will recall some time ago my bringing to your attention Abitibi and Courtaulds' quotations."

(Exhibit 1498B)

G. W. Sawin replied on April 17:

"In view of the worries we both had when you were in Kitchener last week, I did not bother you with discussion of the Brown Corporation matter about which you wrote me under date of April 3. I did have our Sales Manager available should we have had a real opportunity to discuss with you not only the Brown matter, but other matters in connection with mechanical goods. However, later on I shall bring Mr. Hawkins to Montreal with me so that we can have a full discussion. Certainly our company, as well as yours, is interested in profitable marketing conditions.

The facts contained in your letter of April 3 are correct. Please understand that while our company did telephone your Mr. Rutherford stating that the prices you had figured were not correct, considering areas, etc., Mr. Rutherford was advised that

we had all the necessary data here and that we would carefully refigure the whole job. This was done by three men working individually and each one arrived at the same result. I am informed that Mr. Rutherford was told that if our checking showed that our calculations were correct, we would file the proper prices accordingly and advise him. On March 29 your office was advised so that you could revise your figures if you cared to.

Frankly, I feel that from the information which has been given me, we quoted only the correct price and gave your company the opportunity to meet it by so advising your Mr. Rutherford."

(Exhibit 1498A)

As indicated by the above correspondence, the misunderstanding in this matter between the managers of the mechanical divisions of Dominion and Goodrich, had reached such proportions that one of them believed the agreement had been wilfully broken. The matter was then referred to the top executives of the Companies. This set of circumstances in which the correspondence records an active interest being taken by the top management of the Companies in the details of the operations carried on by the mechanical rubber goods divisions is not common, and indeed seems to have occurred primarily in connection with maintaining or strengthening the agreements among the Companies. (See Post-War Planning). It has significance in view of the fact that statements were made at the hearings before the Commission by some representatives of the mechanical rubber goods divisions of the Companies that they had no authority to enter into industry agreements at meetings or elsewhere.

Chapter 9 - Shipping Charges

Because freight charges can be an important element in the delivered price of various types of mechanical rubber goods, owing to the bulk and weight of many of these products, a good deal of consideration has been given by the Companies to the question of which of such charges should be for the buyer's account and which for the seller's. Without some systematic treatment of shipping charges, or an agreement to prepay all shipments, considerable leeway would have been open to any company which wished to give a price concession without breaking the letter of the agreement on prices. The second alternative, because it had the effect of reducing net return, was ruled out by the Companies in favour of the first. The uniform methods of treating shipping charges varied with different groups of products and changed considerably over the years.

Prior to the war, each company issued two different price lists for a number of commodities: an eastern list and a higher western list. The differential was intended to cover part of the higher cost of shipping goods to Fort Arthur and further west. This distinction has been largely discontinued and since February 1947 garden hose remains the only product of any consequence on which east and west prices still apply. Prior to the war also, a number of products including conveyor belts, corporation fire hose and sewer hose were always sold freight prepaid to destination. Some customers, among them all national accounts, railroads and Dominion and Provincial governments, were sold all goods on a freight prepaid basis. Other special shipping arrangements existed with respect to particular products.

However the bulk of all mechanical rubber goods was shipped with freight prepaid by the manufacturers to any one of a lengthy list of agreed upon prepay points. The work sheet system was applied to this agreement and when a change was made it was incorporated in the work sheets. Deviation from this method of dealing with shipping terms took place only under exceptional circumstances and by mutual agreement. The following extract from a letter written by W. J. Scott (Gutta Percha) to G. L. McCrea (Goodyear), with copies to Messrs. Carroll (Dominion), Buchanan (Dunlop), Hawkins (Goodrich), Nicholls (Goodyear) and Fritchard (Dunlop), on July 18, 1940 regarding tenders for the Departments of Munitions and Supply and National Defence and for Defence Industries Ltd. illustrates this point:

"I duly received a copy of your letter to Mr. Carroll of the 16th instant, clearly setting out the special price arrangement that has been adopted for the above. All of this is fully understood by us and we shall be governed accordingly.

I notice that your letter states F.O.B. destination (regular prepay points). After speaking with you on the telephone yesterday, it is my understanding that . . . as the above may require a

delivered price to some places that are not considered as regular prepay points, it will be in order for us to prepay the freight to destination."

(Exhibit 1400E)

In early 1947, discussions began which eventually resulted in a revamping of the method previously used in dealing with shipping charges which simplified the system. The effect of the change was to extend the practice of prepayment in the case of orders of 100 lbs. and over and to contract it in the case of smaller orders. The following extracts from minutes and correspondence show how these discussions proceeded. The minutes of a meeting held on February 14, 1947 read in part:

"... Eastern and Western prices were combined, and one price was set up on all lines where Eastern and Western Prices formerly existed, with the exception of Garden Hose.

5. It was also decided to prepay to all parts of Canada on lots of 100 lbs. or over. Less than 100 lbs. will be prepaid to prepay points and the prepaid list is to be prepared by Messrs. Coon and Davis, based on Branches, Distributors and present prepay points. This prepay arrangement is not to be released until Messrs. Coon and Davis have prepared a workable arrangement for equalizing freight for less than 100 lb. lots."

(Exhibit 1263)

On February 24, E. H. Coon (Gutta Percha) wrote to G. L. McCrea (Goodyear), sending copies to Messrs. Davis (Goodyear), Larsen (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Bergeron (Dominion) and Dunn (Dominion):

"As decided in the Meeting of February 14th, Mr. Davis and the writer met today and drafted the attached as a suggestion to be inserted in the Work Sheets to cover prepayment of freight on 100 lbs. and over.

We would suggest each company study this and make any suggested changes or additions as soon as possible, as we believe most companies are printing new lists and confidential sheets and will be withholding the copy until this can be inserted."

(Exhibit 1204A)

The attachment is headed "Shipping Terms, Mechanical Rubber Goods", and reads as follows:

- "1. Freight will be prepaid to the nearest railway or steamship point in Canada, not including Yukon and Yellowknife Territories, on shipments of 100 lbs. and over on all Mechanical Rubber Goods except those listed under clause 5 below. Shipments to Yukon Territories are freight prepaid to Vancouver, Dawson Creek or Prince Rupert. Shipments to Yellowknife Territory are freight prepaid to Waterways, Alta., or Grimshaw, Alta.

2. Freight on less than 100 lbs. will be sent collect with freight equalized on the nearest equalization point, which will be Branch points, special agents' or distributors' warehouses, as listed below.
3. When Express shipments are required they should go forward collect with freight allowance to the nearest prepay point, based on the actual weight and the amount allowed on the invoice.
4. No deduction for freight may be allowed when goods are regularly shipped prepaid.
5. Exemptions from prepayment on 100 lbs. and over:
 - (a) Rubber Covered Rolls - Inward freight to factory on cores or rolls, as well as outward freight to customer's plant, will be equalized on Toronto, Bowmanville, Montreal, Farnham and Kitchener.
 - (b) Garden Hose - See Work Sheets Page 30 and Garden Hose prepay points Work Sheets Page 167.
 - (c) Tank and Pipe Lining - See Work Sheets. (F.O.B. Toronto, Montreal, Kitchener or Welland)
 - (d) Packing - Two roll lots and over, special price - f.o.b. Toronto and Montreal.

(Prepay points, numbering 31 cities and towns are listed by provinces)."

(Exhibit 1204B)

All of the above, with the exception of numbered paragraph 3, was finally incorporated in the work sheets. The number of prepay points was later doubled.

On May 27, 1947 S. G. Nicholls (Goodyear) wrote to G. L. McCrea (Goodyear), sending copies to Messrs. Bergeron (Dominion), Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Hawkins (Goodrich), Pritchard (Dunlop), Buchanan (Dunlop) and Davis (Goodyear):

"In his letter of May 23rd Mr. Dunn mentioned it was his understanding that I was going to insert a new clause for express shipments under 100 lbs. The notation that I added to Clause 3, on page 167, was as follows:

'Under 100 lbs. ship collect and allow freight to nearest prepay point.'

I would have overlooked this if Mr. Dunn had not referred to it and would appreciate confirmation that this addition is agreeable to all."

(Exhibit 1428E)

The work sheets were in fact amended in conformity with this notation.

On June 4, 1947 S. G. Nicholls (Goodyear) wrote to G. L. McCrea (Goodyear) sending copies to the same group:

" . . .

The present arrangement is that freight is prepaid on 100 lb. shipments (Yukon and Yellowknife excepted). On less than 100 lb. shipments, freight is prepaid to prepay or equalizing points.

It is the less than 100 lb. shipments going to other than prepay points that are causing the trouble, because, in a number of cases, the same freight rate applies to other towns in various areas besides the town that is the prepay point. . . .

. . . in order to take care of the problem that we all seem to be having, we would suggest the adoption of a clause which would cover the matter. This could be added to page 167 and referred to as 3A.

'Where a shipment of less than 100 lbs. is made to a town in the same freight charge area as the prepay point, no charge need be made from the prepay point to destination. . . .'

. . . ."

(Exhibit 1205)

Later Mr. Nicholls apparently asked for an expression of opinion on the prepayment of all shipments, because on July 17, J. T. Dunn (Dominion) wrote to G. L. McCrea (Goodyear) and the others interested:

"Since receiving Mr. Nicholls' letter of June 10, we have had several discussions on the above subject. . . Our feelings on the question of freight prepayment on shipments of less than 100 lbs. may be summarized in the following three points:

- (1) Any controversies to date have been for very small amounts and for this reason have not been of a serious nature. Almost any new system would give rise to complaints to some accounts, and if the present system is working well in the great majority of cases, it would be better to leave it as it now stands.
- (2) When using the system of prepaying freight on shipments of 100 lbs. or over, there is some incentive for customers to order in sufficient quantities to meet this weight limit. . . .
- (3) If freight were prepaid on all shipments, it would mean that Special Mechanical Agents would have to operate on this policy in order to be competitive, and in so doing increase their operating expenses. It is quite possible that if such were the case, they would again agitate for better discounts than they are now receiving.

We are, therefore, not in agreement with removing the 100 lbs. minimum shipment for prepayment of freight at this time."

(Exhibit 1114A)

Points two and three in Mr. Dunn's letter are significant in showing why prepayment of all shipments was ruled out, and point one in showing that the existing agreement was substantially satisfactory and effective.

On July 21, Mr. Nicholls again addressed a letter to G. L. McCrea (Goodyear) and the others:

". . .

We feel that Mr. Dunn is in accord with our views regarding Freight Prepayment and would suggest that if the others are in accord, the paragraph shown on the top of page 2 in my letter of the 4th, be recorded in the Work Sheets as suggested.

". . ."

(Exhibit 1114B)

The paragraph referred to is the fourth paragraph quoted from Exhibit 1205 on the previous page.

Dunlop's representative, H. S. Pritchard, rejected this in a letter dated July 22 to G. L. McCrea (Goodyear), copies being circulated as usual:

". . .

From our standpoint, we would not be prepared to accept the clause suggested on the second page of Mr. Nicholls' 4th of June letter at this time. Our experience has not indicated any undue hardship from the rule now in effect, although there still are a few instances where dissatisfaction results from our efforts to collect the charges on shipments less than 100 lbs. In effect, what we have accomplished is to introduce the freight prepayment on 100 lbs. and over in place of the prepayment of freight to all National Accounts, railways, and on all conveyor belting, that was formerly in existence.

The tendency now seems to be to set up in one form or another, either by general wording or by listing, a whole group of prepay points to wash out the charges which we propose to pass on to the customer on shipments of less than 100 lbs. This, in our opinion, defeats the very purpose of the initial move. . .

Because of our inability at this time to agree with the proposal made in Mr. Nicholls' letter, I would suggest that this item be discussed at our next meeting on 25th August.

". . ."

(Exhibit 1196)

No record is available of the meeting of August 25, 1947 or of later discussion on the point but a new page added to the work sheets and dated December 17, 1948 includes the following:

"Freight on less than 100 lbs. will be sent collect with freight equalized on the nearest equalization point, which will be Branch points, special agents or distributors' warehouses, as listed on page 139 (68 cities and towns are listed by provinces)."

(Exhibit 1558)

In what appears to be the minutes of a meeting held on March 19, 1948 the following is recorded:

". . .

Change Clause 5, page 138, as follows:

The minimum amount, either credited or debited, in connection with freight equalization, is 60 cents. Lesser amounts will be ignored.

". . ."

(Exhibit 1066)

This amendment also appears on the work sheet page 138, dated December 17, 1948.

Because Newfoundland, prior to confederation, was treated by some of the Companies as an export market, it was necessary to bring the handling of shipping charges in the new province into conformity with the arrangement in the rest of Canada. It was therefore agreed to apply the same terms to Newfoundland, and St. John's, Cornerbrook, Grand Falls and Millertown Junction were named as prepay points.

Chapter 10 - Conditions of Sale

As with shipping charges, the Companies reached agreement on other conditions of sale applicable to the merchandising of mechanical rubber goods in order to remove an avenue of possible competition through which a breach might be made in the effectiveness of the agreement on prices. Mechanical rubber goods are frequently purchased at one time in amounts running into many thousands of dollars and terms of payment could be of very material importance to the prospective customer.

The regular terms on standard products were 2 per cent 10th of month following date of shipment, net end of the month following date of shipment. Extended terms of payment were forbidden, although forward dating was allowed before the war on some products and was reintroduced on garden hose in late 1948. Prior to 1941, a small prepayment discount was provided for in the sale of fire hose. This was eliminated at a meeting of December 17, 1940. Evidence that the change was made effective is contained in an exchange of correspondence in January 1941, which indicates that the Companies by agreement insisted on full payment from La Corporation de St. Romuald d'Etchemin, which had split an order for fire hose among the five Companies and following the previous custom, had deducted an amount for prepayment. There were some other slight variations in that different terms applied on occasion to a few products, but the regular credit terms applied to the bulk of mechanical rubber goods. That the Companies considered themselves bound by the agreement until it should be abolished is indicated by the following exchange of correspondence. On May 26, 1947 S. G. Nicholls (Goodyear) wrote to G. Bergeron (Dominion), copies being sent to Messrs. Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Fritchard (Dunlop), Buchanan (Dunlop), Hawkins (Goodrich), Davis (Goodyear) and McCrea (Goodyear):

"Report has been received from our Montreal Representative that Dion & Frere, Ste. Therese, a Goodyear account, has been offered forward dating by one of the Rubber Companies, on Belting to be used on Threshing Machines.

We would appreciate assurance that forward dating is not being offered to this or any other concerns."

(Exhibit 1234C)

J. T. Dunn (Dominion) replied in a letter to G. L. McCrea, dated May 27, copies being sent to the others interested:

"In reply to Mr. Nicholls' letter of May 26, we would like to give you our assurance that we have not offered Dion & Frere forward dating on belting to be used in their threshing machines.

We are not offering forward dating on thresher belting to any other concern."

(Exhibit 1234A)

H. S. Buchanan (Dunlop) also replied on May 27:

"This will acknowledge receipt of your letter of 26th May wherein you advise that Dion & Frere, Ste. Therese, Que, have been offered forward dating on belting for use on Threshing Machines.

We would like to go on record that we thoroughly understand that Agricultural Supplies may only be sold on the regular Mechanical terms, that there is no provision made for forward dating on this material, or in fact any other mechanical items."

(Exhibit 1234B)

No record is available of replies made by Goodrich or Gutta Percha, however, on June 3, 1947 S. G. Nicholls (Goodyear) wrote to J. W. Wright, of Goodyear's Montreal branch:

"For your confidential information, we have checked at this end regarding your report that someone is quoting the above concern forward dating on Belting used on Threshing Machines and have received word from all interested parties that forward dating is not being quoted.

...

If you can give us proof of this, we would not ask the Rubber Company to withdraw their offer but would insist upon forward dating on Thresher Belting being re-introduced by the Industry. Such a move would be a very important one and we would definitely want to be sure of our facts before opening the matter at this end."

(Exhibit 1012)

In the first part of 1947 the rulings that had been put into effect, after the outbreak of war, preventing the quoting of firm prices began to be relaxed. In May it was agreed that prices quoted to municipalities for fire hose were to be guaranteed for 30 days after the order was received. In June it was agreed that fire hose, chemical engine hose and sewer hose sold to municipalities could be invoiced at the price in effect at the time the order was received. The general rule however had the effect of insuring the Companies against losses in a generally rising market, because it meant that increased costs of manufacture or higher prices from the manufacturers' suppliers could be

passed on to the customer. Individually, each company could have adopted the same policy, of course, but without the agreement it would not have had the assurance that its competitors would have done likewise in every case. The likelihood therefore is that price increases were made generally effective more quickly than would otherwise have been the case.

Other terms and conditions of sale were treated in like fashion by agreement. The question of service guarantees has already been referred to, in the chapter on tenders. Throughout the period covered by the documentary evidence, requests by customers were recorded from time to time asking for specific guarantees as to length of service or satisfactory operation. These were uniformly refused. The latest form of the agreement on this subject, as recorded on work sheet page 132A, dated May 2, 1947 reads as follows:

"Mechanical rubber products are warranted to be free from defects in workmanship and material but are not guaranteed for any specific length of time or measure of service. Our liability under this warranty is limited to the purchase price. In the event of failure of our product through defects, we will at our option make replacement or refund, after charging for the service already rendered by the defective merchandise."

That the Companies looked upon the matter of uniformity in the conditions of sale as one of considerable importance is clear from the following two letters. The first was written by E. H. Coon on June 5, 1947 to W. H. Pedlar, Ottawa Branch Manager for Gutta Percha:

"We noticed your requisition, . . . for the National Harbour Board, Prescott, Ont., on which the following note was typed, 'This is a firm bid and not subject to change in price before delivery of the belt'. This is not in agreement with our standing orders for quotations and acceptance of orders, as all our orders are accepted under the following terms:

'Acceptance of this order is subject to price prevailing at time of shipment and to any regulation or modification of price by reason of the order or regulation of any government or agency thereof, any of which becoming operative before delivery.'

. . . the only exception is the recent modification . . . where quotations are being made on Fire Hose, Chemical Engine, and Sewer Hose, to municipalities only.

. . . Both the acceptance of your order and your quotation are not in accordance with our instructions and our agreement in the industry.

. . . it would be very embarrassing to us, if prices are raised before this belt is shipped, not to be able to treat this as any other order, or it would have been far more embarrassing if copy of your quotation had been shown to one of our competitors.

. . . "

(Exhibit 1136B)

C. N. Larsen followed this up with a letter to Mr. Pedlar on June 16:

" . . . It is most regrettable that your quotation omitted the Condition of Sale clause, stating that the order was subject to the price prevailing at the time of shipment, and that no-one in your office noticed this omission before the letter was mailed. The point that I do not understand is that your attention was not drawn to this omission by the statement on the order reading - 'This is a firm bid and not subject to change in price before delivery of the belt.' This seems to suggest to me that you received the order because the National Harbour wanted to be sure that they did not pay more for the belt than the price mentioned in your quotation. Evidently, the other quotations contained the Condition of Sale clause which ours lacked.

. . . My suggestion is that you call on Mr. Ross (of the Harbour Board) personally and explain that you inadvertently made this oversight and have incurred the criticism of your Head Office, and ask him if he will permit you to amend your quotation by adding this clause . . . He may threaten to cancel your order . . . If the worse comes to the worst, I would rather have the order cancelled than lay ourselves open to a charge of breach of faith on the part of our competitors.

. . . "

(Exhibit 1136A)

Chapter 11 - Incidental Restrictions Supporting Price Structure

A. Range and Specifications

The Companies manufactured different grades of certain types of belting, hose and packing. Each grade of a particular kind of product was given a brand name by each of the Companies. The work sheets recorded in tabular form the brand names which were regarded by the manufacturers as being of comparable quality. For example, page 17A, dated February 14, 1947 of the mechanical work book shows the following:

"CONVEYOR BELTING - Competitive Brands

<u>Goodyear</u>	<u>Gutta Percha</u>	<u>Dominion</u>	<u>Dunlop</u>
Stacker	Superex	Matchless	Record Maker
Style 'B'	Efficiency	Giant	Gibraltar
Style 'W'	Victor	Security	Imperial"

This type of record made for convenience, because it was then necessary in correspondence or conversation, only to refer to one brand name in order that all interested should be aware of the particular grade being referred to. Page 10 of the work book, dated December 18, 1947 contains an example of the use of this technique. Item 5, under the conditions of sale covering conveyor belting, reads as follows:

"When figuring the price on 36 oz. Conveyor belting, any quality, the price of 32 oz. is to be brought to a net per 100 ft. figure and then the 10% is to be added to this figure. For 42 oz. duck Conveyor belting, add 25% to the netted price of the 32 oz., and for 48 oz. duck add 40% to the 32 oz. netted price Stacker or Style B quality conveyors. Style W is not supplied in 42 oz. or 48 oz. duck. 60 oz. duck supplied in Stacker quality only at a surcharge of 65% on 32 oz. price, using same formula as above."

Comparable grades produced by each Company were not identical in all respects but were considered equal in general quality, as suggested by the above quotations. Evidence on this point was given by G. L. McCrea in his testimony at pages 4337 to 4340 of the transcript.

"BY MR. MARTIN:

- Q. Mr. McCrea, from time to time at meetings did you have occasion to discuss with other representatives of the mechanical goods manufacturers the question of standardization of products? Do you recall that?
- A. I should like to think about that. What do you mean by 'standardization of products'? If you mean by 'standardization of products' equal qualities, if that is what you had in mind -
- Q. Yes,

A. Then I would say there is no such thing really.

BY THE DEPUTY COMMISSIONER

. . .

Q. What about the standardization of specifications and external appearance - widths - thicknesses and the amount of labor content?

A. Could you specify some particular item?

Q. Well, I am not familiar with the products, but let us assume, for the sake of illustration, a particular class of belting.

A. Well, take conveyor belting, yes. Supposing, may I say this, that the qualities of conveyor belting are indicated by three things. One of these is the weight of the fabric. The second is the adhesion of the plies of the fabric to each other, and the third is the adhesion of the cover stock to the belt itself, and the fourth is the abrasive qualities of the cover stock itself. All those things represent quality. Weights of duck usually used are 28-ounce or 30-ounce or 32-ounce or 36-ounce or 42-ounce -- and I think some 48-ounce. Now, if you want to talk about these discussions -- and these kinds of discussions did come up at times -- for instance with respect to 28-ounce duck, I think it is a good thing for the customers and a good thing for the industry to use only satisfactory weights of duck. Our experience was that 28-ounce was not satisfactory, it was not a satisfactory weight of duck to give satisfactory service. Therefore the time came -- I cannot recall what year it was -- when we decided that we would not use 28-ounce duck.

BY MR. ROBINETTE:

Q. Goodyear?

A. Yes, Goodyear. In those days company practice was 28-ounce and 32-ounce; they were common practices. We decided, as I recall it, that we only required one weight of duck, and that was 32-ounce. We established a price for 32-ounce duck, and deleted the price, as I recall, of the 28-ounce. It was not satisfactory to the trade. It was not a matter of profit; it just was not a good belt to have on the market. That is all there was to it. The probability is that the other companies took the lead in our decision and, so far as I know, I think in conveyor belts for several years nobody has offered a 28-ounce duck. But they could have offered it if they wanted to offer it. There is no rule or agreement or arrangement that nobody will make a 28-ounce duck. The thing was that they all felt that the 32-ounce duck was a better product for the industry. And after you have settled all these questions, there is the matter of quality --

and I would claim that our quality is better than any other rubber company's quality, and for several reasons. First, from our actual tests, we have found that our belts will flex better and longer than others, and will have a longer life in them than those of our competitors. Our adhesion of plies may not be as great, but that is not the most important factor to our mind. We have found that while tensiles may not be as heavy as the others, they may run 300 or 400 pounds better tensiles - that is, breaking strength - we have found that our belts have been better than the others. So our idea of judging quality is entirely different. Another rubber man talking to you may have an entirely different story to tell as to how they arrive at qualities. Therefore while you can write down on a piece of paper certain physical qualities of belting, it does not necessarily indicate any inferiority or superiority, whether one is superior to the other. So, when you talk about discussing construction features, I would say yes, we have, - although they have not been discussed recently, in my opinion. That is fundamentally right, but I do not recall recent discussions, much, as to quality.

BY THE DEPUTY COMMISSIONER:

Q. What about external appearance?

A. External appearance? - both identical. You could not tell any difference by looking at them. Except, of course, upon close observation you might find that somebody - well, I think one company used a much heavier friction than we do, - more rubber, if you wish to call it that, or more cement compound. But they do not get as good results, because we in turn may skim cut our belt - put it through a machine which skim cuts it, which adds a great deal to the adhesion of the cover. So though we may not have as much material, it might be more effective. So I would say we do not have like qualities; but we have tried to have something - in the main, we try to have a belt which matches the other fellow's belt. Therefore you will find in these work sheets, as you go through them, references to quality, one opposite the other; but that does not mean all that you might think, when you look at it. But it helps our salesmen. We put it in there; because a man may say, 'Do you have a belt like that?' and the salesman can say, 'Yes, this is our product, and that is equal to Matchless or Record Maker'; but it is not truly indicative of like quality."

As stated by Mr. McCrea, qualities were not identical but the evidence indicates that essential characteristics of each grade were governed by an understanding within the industry. A considerable number of restrictions respecting construction features were recorded in the work sheets. The following are some of those which applied to the quality of belting which it was permissible for the Companies to supply at the time of this investigation. The weight of duck which could be incorporated in the grade

of conveyor belting known as Style W, Victor, Security and Imperial was limited. The Companies would supply white covers on only one grade - Style B. A special type of fabric known as breaker ply fabric was permitted in only two grades of belting and then only when the cover was 3/32" thick or heavier. Endless thresher belting was to be made in only one grade. Combine harvester belts could not be sold in grades lower than Type E.P. transmission belting. The close connection between these agreements on specifications and the matter of price is indicated by item 22 of work sheet page 13, dated June 1, 1948, which reads:

"While we may supply Conveyor Belts made with two plies, such belts will be sold on the 3 ply price basis, irrespective of lengths or widths."

In other words, in this instance it was permissible to supply the cheaper quality belt only if it were to be sold at a price which would not have the effect of tending to lower the general price structure. Comparable restrictions applied to rubber hose of various kinds. Elm garden hose or its equivalent was not to be supplied with wire winding; when wire wound water hose was required, one of the regular types of industrial water hose was to be supplied. Acid and vinegar suction hose were to be manufactured only in the smooth bore type. Cord Wrapped air drill hose could not be made in fewer than four plies.

One type of limitation on range, adopted by the Companies, effected restrictions on dimensions and weights. This was a matter of considerable consequence both to the manufacturers and to the consumer because it applied to a variety of products. The nature of this type of agreement is illustrated in an exchange of correspondence beginning September 3, 1940, when H. S. Buchanan (Dunlop) wrote to G. L. McCrea (Goodyear), sending copies to Messrs. Nicholls (Goodyear), Carroll (Dominion), Scott (Gutta Percha) and Pritchard (Dunlop). The letter reads in part:

"We understand that Mr. Carroll's Company is supplying Wrapped Construction Hose in long lengths, spliced joins. According to our understanding this is not in accordance with our set-up, in fact some few years ago when we wished to supply Air Drill Hose in continuous lengths with a spliced join, it was ruled that this was not permissible.

...

This does not appear to be covered in the work sheets but you will, no doubt, recall the ruling which we have in mind. However, the point now is, is it permissible to supply Wrapped Construction Hose in lengths longer than 50 feet?"

(Exhibit 1416A)

W. J. Scott (Gutta Percha) replied on September 5 in a letter to G. L. McCrea (Goodyear), with copies to the others interested.

"I have received copy of Mr. Buchanan's letter to you of the 3rd instant . . . and would say that I remember quite well this question coming up at one of our meetings quite some time ago and it was definitely ruled that none of us would offer Wrapped Construction Hose in lengths longer than 50 feet; . . .

I would suggest that this ruling be shown in Work Sheets to prevent any misunderstanding on the part of any of the interested parties."

(Exhibit 1416B)

On September 6, Mr. McGrea wrote to Mr. Carroll, the usual copies being sent.

"Our understanding is the same as that Messrs. Buchanan and Scott.

. . .

Mr. Scott requests that I incorporate this in the Work Sheets, which I shall be glad to do, if it is agreeable to all concerned,"

(Exhibit 1416C)

Mr. Carroll indicated his position in a letter with the usual copies to Mr. McGrea, dated September 9, 1940.

"We have noted Mr. H. S. Buchanan's letter dated 3rd instant.

We can advise that our Company is not offering to supply Wrapped Construction Hose of spliced construction and it will be quite satisfactory to us if a definite ruling on this item is included in our Mechanical Work Sheets."

(Exhibit 1416D)

All Companies being in agreement, S.G. Nicholls (Goodyear) wrote to Mr. Carroll (Dominion) on September 10, sending copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Hawkins (Goodrich) and McGrea (Goodyear):

"The following items have been 'cleared' and are released:

Wrapped construction Hose in long lengths

Wrapped construction Hose is not to be supplied in lengths longer than 50 feet - that is, two or more lengths joined together by splicing.

This rule, we assume, applies to braided and wrapped cord constructions such as items 1, 5, 10 on page 38 and Pump Hose, pages 48, 49, 49A, 49B.

Please record on page 37.

. . ."

(Exhibit 1415)

At a meeting on October 29, 1940 an exception to the general rule was agreed to, and an amendment recorded in the mechanical work book as follows:

" . . .

The following is to be added at the bottom of page 49; also a similar notation is to be made on Work Sheet page 106 under Gasoline Hose:

1" by 4 Ply Gasoline or Oil Conducting Hose with synthetic tube, wrapped construction, may be sold in lengths longer than 50 feet (spliced), for Tank Wagon service only, at same price as 1" Braided Synthetic Gasoline Pump Hose.

. . ."

(Exhibit 1410A)

The work sheet covering the general rule was changed at a meeting of mechanical representatives on December 17, 1940 according to the minutes, which read in part:

" . . .

Page 37, Clause 19 -

The new clause will read as follows:

Wrapped construction and braided construction 'mandrel built' Hose is not to be supplied in lengths longer than 50 feet by splicing. The only exception is 1" Oil or Gasoline Hose for Tank Wagon service which may be supplied in 150 ft. lengths with no charge for couplings used in joining 3 - 50 ft. lengths.

. . ."

(Exhibit 1407)

The reason for this agreement lay in the difficulties experienced in manufacturing a hose of wrapped construction in lengths longer than 50 feet, because the process requires the use of steel poles, which for convenience in handling are limited in length. Splicing this hose meant additional cost. However, the Companies recognized that if one company offered for sale such a hose in longer lengths, the others would be forced to follow. The matter was dealt with by all Companies agreeing not to supply the market with lengths of hose longer than 50 feet.

Another understanding among the Companies was to the effect that they would not introduce a new or different product until the matter had been brought up for discussion and agreement had been reached upon price and the time of release. The procedure was outlined in the letter previously referred to, written by S. G. Nicholls (Goodyear) on June 12, 1947 to G.L. McCrea (Goodyear), with copies sent to Messrs. Bergeron (Dominion), Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Fritchard (Dunlop), Buchanan (Dunlop) and Davis (Goodyear), as follows:

"Effective June 11th, the present width restrictions on Matchless, Superex, Record Maker and Stacker Conveyor Belting are withdrawn.

Statement may be made to Branches that the respective grades are now supplied equal to pre-war quality, but no information is to be given as regards Friction Pull, Cover Tensile or Crude Rubber content.

The paragraph on Work Sheet, page 15, referring to restrictions on Record Maker and equal grades should be deleted. (Previously belts of this style were limited to widths of 54" and over)

The reason we are dating this release the 11th is that Mr. Coon advised his organization yesterday.

We should like the procedure re-affirmed to the effect that no information on prices or any other matters will be released to the Organizations until final clearance has been made by letter, telephone or telegraph."

(Exhibit 1232A)

The significance of this document lies, not in the resumption of a grade-width temporarily withdrawn for purposes of rubber conservation, but rather in the affirmation of general policy contained in the last paragraph.

During the period of wartime controls, the industry took steps to reduce and consolidate the range of products manufactured and to eliminate all but the most essential types and grades. It was in this sphere that cooperation among the Companies probably made its biggest contribution to the success of efforts to continue to supply the Canadian market with its indispensable requirements in the face of shortages of raw materials, equipment and labour. Size and width limitations were introduced, lines were dropped, certain grades were discontinued, substitute materials used and production information exchanged. The country as a whole benefitted because the expert technical advice which came from consultation among the representatives of the mechanical rubber goods manufacturers, meant that the best use of limited resources in a highly complex field, could be made. Production controls were available to channel resources into the essential lines decided upon, on the advice of the industry. Another result of the reduction in range and simplification of lines as compared with the pre-war period, was that it had the effect of tending to hold down costs of manufacturing, and consequently to contain the upward pressure on price ceilings.

The Companies recognized that with the removal of Government controls, the continuation of some wartime restrictions on range would benefit them by keeping manufacturing costs lower, though the consumer no longer had the guarantee that in giving up the choice of a wider range of products, he got in exchange lower prices. The minutes of a meeting of company representatives held on October 5, 1944 to discuss post-war planning, records the following:

" . . .

. . . It was also agreed that the question of resumption of production of lines discontinued during the war required consideration. In this connection the opinion was expressed that it might be well to go slowly in resuming production of discontinued lines, and it was agreed that lines should not be re-introduced without prior consultation with the industry.

. . .

The chairman (Mr. Larsen) undertook to write to these gentlemen (appointed to lead post-war planning discussions in different sections of the mechanical field) suggesting that their groups might give consideration to, and submit recommendations on such points as the following:-

. . .

Lines: Should some wartime restrictions be continued (a) temporarily (b) permanently? What about (a) discontinued lines, (b) packing (c) simplification and standardization of lines?

. . . "

(Exhibit 1006B)

That the industry's idea of post-war planning covered a longer term period than simply the expected period of shortages after Government decontrol of the industry is indicated above by the consideration given to the permanent continuation of wartime restrictions on range. The policy suggested in the minutes, of relaxing restrictions born in the wartime period only after consultation and agreement among the Companies was adopted. In the following instance the purpose of retaining the restriction appears to have been to obtain better over all prices. On July 9, 1947 J. T. Dunn (Dominion) wrote to G. L. McCrea (Goodyear), copies being sent to Messrs. Nicholls (Goodyear), Davis (Goodyear), Coon (Gutta Percha), Larsen (Gutta Percha), Pritchard (Dunlop) and Buchanan (Dunlop), regarding transmission belting:

"We received Mr. Nicholls letter of July 2 suggesting that width restrictions on Trojan and similar grades be increased from 15% to 20% (sic).

Such a step in our opinion would be tending to lower the overall price structure of Transmission Belting. As we are faced with higher labour costs and possibly material costs, I do not believe that any company wishes to reduce their overall return by selling lower grades of belting. Since Mr. Nicholls' company receives only an occasional request for this type of belting, we believe it would be preferable to sell the next higher grade rather than change our present Condition of Sale (width restrictions were so referred to in the Work Sheets) for Klingtite or equivalent.

If the majority feel that width restrictions should be removed, we will withdraw our objection . . . "

(Exhibit 1207B)

H. S. Buchanan (Dunlop) on July 10, 1947 wrote to G. L. McCrea (Goodyear), sending copies to Messrs. Nicholls (Goodyear), Davis (Goodyear), Larsen (Gutta Percha), Dawson (Gutta Percha), Bergeron (Dominion), Dunn (Dominion) and Pritchard (Dunlop):

"Prior to H.S.P.'s departure on his vacation he discussed with the writer S.G.N.'s letter of July 2nd in regard to the proposal that the restrictions on width of Samson and equal grades of Transmission Belting be changed from 15" to 20".

In view of the fact that there is more to this item than appears on the surface, particularly so in view of the fact that it could conflict with Terminal Grain Elevator Belting, we would prefer to leave the width of this grade of belting as it is at the present time.

..."

(Exhibit 1207C)

The matter was settled for the time being when Mr. McCrea wrote to Mr. Bergeron on July 16, 1947 with copies to the others interested:

"Referring to Mr. Nicholls' letter of July 7th, Mr. Dunn's letter of July 9th, Mr. Dawson's letter of July 7th and Mr. Buchanan's letter of July 10th in connection with increasing the width on Transmission Belting. No action will be taken at the present time to increase the widths from 15" to 20" on Giant, Trojan, Samson or Klingtite Transmission Belting.

..."

(Exhibit 1202)

Representations were made by witnesses to the effect that the sole purpose of the continuation of these restrictions after the ending of all Government controls over production of rubber goods on April 1, 1947 was to conserve raw materials while they were still in short supply. However, page 2 of the mechanical work book, dated December 9, 1947 which was the current work sheet page when the work books were received by the Commission in February 1949, referred to the conditions of sale of transmission belting, as follows:

"Klingtite not to be made over 15" wide".

Joint action by the Companies was also employed in resisting pressure by customers directed towards the introduction of innovations of various kinds, which the Companies considered would increase their costs, disturb their marketing arrangements or produce some other undesired result, but which would require all Companies to follow, were the example to be set by one of them. Such a case was the matter of specially branding conveyor or flat transmission belting for large distributors, a question frequently raised by the trade. In 1944, a customer of the parent company of Goodyear in the United States, wished to secure specially branded hog beater belting for its Canadian agent. On May 3, 1944 G. L. McCrea wrote to the Western Sales Manager of Goodyear in Akron, Ohio.

" . . .

In reference to the matter of special branding, we have an industry rule that we do not make any special brands of conveyor or flat transmission belting.

. . ."

(Exhibit 1055)

In 1946, on September 5, A. E. Smith (Goodyear's Branch Manager in Winnipeg) wrote to G. V. Davis:

" . . .

As you know, there have been four co-operative associations; namely, Alberta Co-operative, U.F.A. Central Co-operative .. the Saskatchewan Co-operative Wholesale and the Manitoba Co-operative Wholesale.

. . .

All these co-operatives now have what is called the Inter-provincial Co-operative, . . .

The idea of this organization is to make contacts with various manufacturers and endeavour to interest them to make special brand lines, offering them a volume of the three provinces, which is, undoubtedly, attractive to a lot of suppliers.

. . .

At present, there has been no move by these people in the direction of mechanical rubber goods, but the day may not be far distant when Mr. Fast (the General Manager) might do some thinking along these lines. If it does mature, are we interested in putting a special brand name on Klingtite Belting?

. . ."

(Exhibit 1109Q)

Mr. McCrea replied on September 25, 1946.

" . . .

For a long time the Industry ruled against making private brand or special brand Transmission belting. This ruling has been reaffirmed today, and this will advise you that we would not be interested in making private or special brands of Transmission belting for the Western Co-Operative, or any other company.

There are good reasons why the Industry feel that the making of private or special brands of Transmission belting would not be in the best interests of the Industry, and I will not burden you with these reasons but simply pass along to you with this letter the industry ruling."

(Exhibit 1058)

The work sheet page number 2, dated December 9, 1947 contains the prohibition in the following terms:

"Private brands of Flat Transmission Belts, such as Thor, E.P. or Klingtite, will not be made for any class of trade."

The subject again arose in 1947, when on December 18, H. S. Pritchard wrote to S. G. Nicholls.

"We have received an inquiry for conveyor belting which specifies friction pull, cover tensile and 28 ounce duck. It also specifies that the belts be made of Buna S rubber and the accompanying blueprint calls for the customer's name to be branded along the side of the belt.

We do not sell conveyor belting on the basis of friction pulls or cover tensile. Furthermore, we do not propose to tell our customers the rubber composition of the belts. Moreover, we prefer to brand the belts with our own company name and quality of belt and are not prepared to brand our customer's name on conveyor belting.

It has not been our practice for a number of years to make conveyor belting in 28 ounce duck and we see no reason for introducing it at this time."

(Exhibit 1047)

The matters raised in Mr. Pritchard's letter were subjects of agreement among the Companies and this letter expresses a confirmation of existing understandings. Special branding was one of several specifications from time to time requested by customers which the Companies jointly refused to implement. Particularly was this true of specifications laid down by customers when calling for tenders.

B. Distribution

The correspondence and the work sheets reveal that the Companies from time to time concluded agreements the effect of which was to restrict the manner in which certain products could be dealt with or the use to which such products could be put. One object of these agreements appears to have been to support the general price structure and the over-all return received by the Companies, and the agreements promoted this end in several different ways.

The Companies were able to merchandise remnants or seconds without tending to lower or otherwise disturb the price structure because of their ability through joint action to maintain a division in the market. The minutes of a branch managers' meeting in Montreal, dated June 8, 1945 prepared by A. G. McGiverin, Dominion's Branch Manager in Montreal, deal with this question:

". . .

Referring to the second last paragraph in our Minutes of Meeting on May 21st regarding the proper understanding with respect to the sale of belting and hose remnants. Clarification from Head Office reads as follows:

'Agreed not to make scrap belting for anyone or offer it for sale. Remnants of belting sold to Junk Dealers are not to be over 25 feet long.

It has been my understanding over a period of years that "Seconds", "Job Lots" or "Obsoletes" in Belting can only be sold at special prices to recognized "Junk Dealers" and then only in lengths not over 25 feet.

Also only "Job Lots", "Seconds" or "Remnants" of hose or other agreed lines may be sold at special prices to "Junk Dealers" only."

(Exhibit 1301B)

The work sheets indicate this agreement continued to be in effect at the time of this investigation. Page 28 of the mechanical work book dated December 23, 1948 contains an amplification of the above rule as regards garden hose:

"Remnants and Seconds of Garden Hose, and 1" x 2 Braid Water Hose:

- (A) Lengths under 12½ ft. to be sold only to Junk Dealers, with the exception of Washing Machine Manufacturers and any other manufacturer purchasing Garden Hose in short lengths to be used as part of the article they are producing . . ."

The question of restricting the end use of a product would ordinarily arise where customers attempted to substitute a cheaper product for one specially designed for the task to be performed. The prohibition of such substitution enforced by a single company might be explained on the ground that the company had a clear interest in maintaining the reputation of its products by preventing their being put to uses for which they were not satisfactory. But a joint understanding among several companies as to the uses to which each others' products might be put, is not easily explainable on the same ground. Agreements of this kind are recorded in the work sheets and the following are examples:

Page 3 dated May 6, 1946

"Hog Beater Belting is supplied only 8 plies and over. It may be sold any class of trade but only for hog beater service."

Page 6 dated February 11, 1944

"On new material made for trace purposes and on the understanding that the above accounts must guarantee that the material will be used in connection with harness purposes (and not for belting) refer to Head Office for price."

Page 30 dated December 23, 1948

"Trapped Hose - Elm 5/8" - Not to be stocked; made to order only. Not sold for use as Garden Hose. Sales restricted to

washing machine manufacturers, builders of gasoline launches and others who require it in connection with the products they manufacture."

The correspondence too, contains references to such agreements. In a letter dated January 4, 1940 H. S. Buchanan (Dunlop) wrote as follows to S. G. Nicholls and sent copies to Messrs. Carroll (Dominion), Scott (Gutta Percha), McCrea (Goodyear) and Pritchard (Dunlop):

"In checking over the Work Sheets recently submitted I have the following comments to offer:

. . .

Page 7 - Terminal Grain Elevator Belting

I would suggest that a notation be added to this sheet to read - 'May not be sold for parcel conveying'. Prior to April 19th, 1938, Grain Elevator Belting was available for parcel conveying and in order to avoid any confusion regarding this would suggest that a notation as above should appear on this sheet.

. . ."

(Exhibit 1425A)

The work sheets indicate this regulation was still in effect at the time of this investigation.

Some mechanical rubber goods products were distributed through a very limited number of accounts and some were sold only from the head offices. In some cases the reason for such limited distribution involved certain technical problems associated with production or installation of the product, but in at least one case the evidence indicates that the distribution was also restricted in order to maintain the price structure. This was the case of conveyor belting. The manufacturers sold all conveyor belting direct to consumer accounts, except on original equipment sales, where a small list of conveyor equipment manufacturers earned a small sales commission on sales made by them. Dunlop broke this agreement in 1937, by secretly permitting the sale of conveyor belting through a distributor in Vancouver. The following letter dealing with this incident, already referred to on page 70, indicates that part of the reason for selling conveyor belting direct, was that the Companies believed wider distribution would lower the price level. J. E. Jones, General Sales Manager of Dunlop, wrote to his Western Sales Supervisor in Vancouver on March 10, 1939:

"I had a rather serious complaint from one of the other Companies about our set-up with Fleck Bros. and their complaint was based on four points;

1. Our conveyor belting was listed in their catalogue on page 10. They could not understand why Fleck Bros. would

be interested in cataloguing our conveyor belts when they were not in a position to sell them and make a profit.

2. They contended that Fleck Bros. were selling conveyor belts and had two or three specific instances where such was the case.

. . .

I believe there have been one or two other cases where conveyor belts have been charged to Fleck Bros. and billed by them and if so, it is absolutely wrong.

Fleck Bros. can not appear in these pictures or even receive the orders without it embarrassing us seriously . . .

You can quite realize how important this is because if we were to start jobbing conveyor belts it would spread and you would never know where the price would end.

. . ."

(Exhibit 1446)

Similar agreements restricting distribution applied to other groups of products. Items in the work sheets for example, prohibited the sale of terminal grain elevator belting to special agents or dealers, and ruled against the quoting of fire hose to municipalities through local dealers in certain cases.

Chapter 12 - Resale Price Maintenance

Besides agreeing that the prices quoted by them on the products listed in the work sheets would be uniform, the Companies have taken steps to bring about a measure of uniformity in the resale prices of these products also. This was done in two ways. Partly it was the result of understandings between individual companies and certain of their distributors that the latter would maintain the prices and sales policies laid down for them by the Companies on all types of mechanical rubber goods which they handled, and partly it was the result of an agreement among the Companies to price maintain particular products.

H. S. Fritchard's evidence before the Commission at pages 4085 to 4088 is pertinent to the problem with respect to distributors.

"Q. Now, how about the question of price maintenance. Do you issue any instructions to your special agents or jobbers with respect to the maintenance of prices?

A. We definitely do. In our line besides having a special agent in the north country, he is not an exclusive agent, we have our own representative there and certainly we cannot have our agent having different prices than our own company representative would quote. So, if we appoint a special agent we do so with the understanding that he will buy our product, service our customers, maintain our prices and policies, and if he does not we reserve the right by arrangement with him to break any arrangement we have on reasonable notice.

. . .

Q. As I understand it, your company competes at all levels of sale with all of your customers who are in the resale business, so therefore you have a natural interest to maintain the prices they charge and as a matter of policy you do insist?

A. I insist upon our own agents doing what we ask them to do.

Q. Going beyond your agents, the jobbers to whom you sell are also competing with your branches in selling the same classes of consumers and others. Are you equally interested?

A. Not to the same extent because their sales are not as big a factor, but to my knowledge our jobbers will often sell at a higher price than we sell.

Q. I think you told us yesterday that their margin -

- A. - is rather limited. And if in their particular area they can establish a price that gives them a little better earning power or recompenses them for added storage or something like that, we say that in effect to our jobber that the prices in our catalogue less the known discounts are our basis of selling and you are in competition with them, and if you can go higher we are not going to criticize you but if we get an inquiry direct we will quote this other price. At times they may underquote the dealer price a little bit. But when it comes to a special agent, yes, we say this is our price and this is the price we require you to sell at.
- Q. I assume then that it must be part of your practice to make sure that your special agents and jobbers are informed of any discount policy applicable to the goods they sell?
- A. They have to have that information.
- Q. They would have to have copies of -
- A. - the 'N' and 'J' Lists and so on, because if they did not they would not know who we were giving the 5 per cent, the 10 per cent to and so on. That is part of the working details we have to supply them with."

Mr. Pritchard's statement explains Dunlop's interest in the prices charged by its own distributors, but does not deal with the question of the concern shown by the Companies from time to time in the prices charged by distributors not handling their own products. The following incident indicates an understanding that each company would take steps to secure the adherence of its principal distributors to the agreements in effect among the Companies. On May 17, 1937 H. S. Pritchard (Dunlop) wrote to the Northern Canada Supply Co. Ltd.:

"We have a report from one of the Rubber Companies that under date of May 6th you invoiced 1" 4 ply Flexicord Air Drill Hose to Powell Rouyn Gold Mines Limited, at \$60.90 a hundred feet, whereas the present effective price is \$66.99 per hundred feet. It is also stated that this hose was supplied against

the customer's order dated May 5th, which, if correct, would definitely stamp this particular deal as irregular in relation to our agreed agreement with the other Rubber Companies.

As pointed out in our verbal discussions last January, and as written into our agreement, it is absolutely essential that the prices and policies as defined by our Company shall be followed at all times. I will be very glad to have an explanation of this particular transaction at your earliest convenience."

(Exhibit 1459A)

Northern Canada Supply, Limited, replied on May 19, 1937:

"We are rather surprised at your letter of May 17th re hose sold Powell Rouyn Gold Mines. This Mine has not ordered or bought any Flexicord Hose from us. The order which we received and filled was for Gibraltar Air Hose, price as invoiced \$60.90 per 100 feet. This is the price at which they are entitled to buy, and your informant, therefore, is apparently in error, in regards to quality of hose ordered and supplied."

(Exhibit 1459B)

On May 22, 1937 H. S. Pritchard wrote to G. L. McCrea (Goodyear), who had passed on the complaint from the George Taylor Hardware Company quoting the reply he had received from Northern Canada Supply. Mr. McCrea replied on May 25:

" . . .

Your letter just shows how misunderstandings can arise, and the only way is to check them up in the proper spirit which I know each of us does when occasion arises.

I thank you for your explanation and I shall send it on to the George Taylor Hardware Company - New Liskeard."

(Exhibit 1459E)

Meanwhile, Mr. Pritchard had written to Northern Canada Supply Ltd. on May 22:

"I was delighted to receive your letter of May 19th, and to know that the criticism tendered by one of the other Companies was an unfair one."

So far as our mutual relations are concerned, the subject is closed, but knowing how carefully we guard our prices on the basis set up in our price book, we feel confident you will always maintain careful guard in your business transactions on Dunlop products . . ."

(Exhibit 1459D)

Further evidence shows that although distributors other than special agents and national distributors were not so rigidly controlled, joint efforts were made by the Companies as necessity arose, to regulate the resale of mechanical rubber goods by jobbers and other classes of buyers.

In addition to the policy adopted by the Companies of supervising the selling activities of various classes of distributors to a greater or less degree, stringent control was exercised by them over the resale prices of some products at different levels of distribution. The most important products in this category were conveyor belts, V belts and various types of fire hose.

Conveyor belting was generally sold by the Companies direct to consumer accounts, although limited distribution was made through the selling activities of accounts on the Conveyor Equipment Manufacturers List. The current work sheets show that buyers on this List were required to sell at prices established by the Companies. This policy of close control over the resale price of conveyor belting is one of long standing. In 1937 when Dunlop were considering secretly breaking their agreement with the other Companies to the extent of permitting an engineering supply company to handle conveyor belts, they nevertheless insisted on maintenance of the resale price as indicated in a letter of August 12, 1937 from H. S. Pritchard to Dunlop's Western Sales Supervisor:

" . . .

You are fully acquainted with the Rubber Manufacturers' practice in the handling of conveyor belting direct to consumer accounts in every case, excepting on Original Equipment when the Conveyor Equipment Manufacturer, or rather a somewhat limited list of Conveyor Equipment Manufacturers, are entitled to a small sales commission.

. . .

. . . I feel that Fleck Bros. are probably one of the most active engineering supply houses in the Dominion, and are likely to do a very splendid job in the handling of conveyor belting, but at the present time I can see certain limitations to any profitable confidential deal that might be considered. In the first place, they would have to guarantee to maintain to the copper the agreed upon resale prices, they would have to refrain from dealing with or offering conveyor belting to all the National Accounts in the British Columbia territory, quotations would have to be made out by Dunlop on Dunlop paper, and invoicing done by Dunlop, etc.

. . . "

(Exhibit 1480EE)

Of all mechanical rubber goods products, V belts were affected by perhaps the most rigid merchandising agreements. This matter is dealt with separately in the chapter on V belts. So far as resale price main-

tenance is concerned, however, the position is summarized in a letter written by H. S. Buchanan (Dunlop) to R. M. B. Miller, General Manager of the Automotive Supplies Division of Goodrich on February 10, 1941, which is about the time Dunlop began manufacturing F.H.P. belts for Goodrich.

" . . .

There is just one item which we would like to confirm with you and that is, in the resale of these Belts, both by your Company and by your Distributors, that the schedule as established by the industry, will be maintained. I am quite satisfied that you understand this, but in order to avoid any possibility of future complications, we would appreciate your acknowledgment that this is thoroughly understood . . .

In regard to your Blanket Order, we agree that the initial release on your R-14000-1 is on the basis of discounts of 66% and 35%. However, we would like to point out that your Blanket Order stipulates these two discounts without any time limit, and actually the discounts are subject to revision. If at any time the Stockist Jobbers discount of 66% is revised, either upwards or downwards by the Industry, your cost of course, fluctuates accordingly, and likewise the resale price would be revised. I think you understand that this 66% discount is one that is established by the Industry and not by our company independently.

. . . "

(Exhibit 1439)

Finally, the third group of products in the merchandising of which resale price maintenance was a feature was fire hose. Particularly was this true of fire hose sold to municipalities, though other sales of fire hose were subject to a similar policy of resale price maintenance, perhaps less strictly enforced. Much discussion and joint action by the Companies, both at the head office and branch level was involved over a great many years in ensuring that only uniform prices were quoted to municipalities for their requirements of fire hose. The following extract from page 60 of the work sheets dated December 13, 1948 dealing with this problem is self-explanatory.

- "2. Quote Municipalities direct, except where conditions as outlined in Clause #9 prevail.

. . .

9. Where a Municipality (Branch cities excepted) is in the market for Corporation Fire Hose, Chemical Engine or Sewer Hose, Branch Managers may arrange to quote a Municipality through local dealers.

- (a) The Dealer obtaining the order or part of order, may be allowed 7- $\frac{1}{2}$ % commission. Where the 7- $\frac{1}{2}$ % commission is allowed it will be on the understanding that the price quoted by dealers must be the same price as would be quoted to a Municipality direct by us.

When we submit a quotation to dealers, the following clause is to appear on such quotations:

'On the understanding that you will quote and invoice goods covered by this enquiry to Municipality of ... at prices and terms mentioned above, you will be allowed a commission of 7- $\frac{1}{2}$ % on Municipal Fire Hose only, should you be successful in obtaining the order.'

- (b) The 7 $\frac{1}{2}$ % commission applies on 1- $\frac{1}{2}$ ", 2" and 2- $\frac{1}{2}$ " Corporation Fire, Sewer Hose and Chemical Hose only.
- (c) Quotations may be made through more than one Dealer.
- (d) The following cities are not to be quoted through Dealers:

Halifax	Ottawa	Winnipeg	Edmonton
Saint John	Toronto	Regina	Vancouver
Quebec	London	Saskatoon	Victoria
Montreal	x Windsor	Calgary	

x-Quoted through 'D' in 1941.

. . . "

This was the system adopted by the Companies and currently in force at the time of this investigation in the making of such sales. Substantially the same arrangement had been in effect for many years prior to the war, though it was the changes and amendments to the agreement which gave rise to much of the correspondence.

Chapter 13 - Branch Meetings

Managers of those rubber company branch offices in various localities which handled mechanical rubber goods, have held meetings from time to time for a great many years, for the purpose of implementing agreements reached by head office meetings. It is not known precisely when such meetings first began, though the evidence indicates that, as a feature of the general arrangement, they were initiated some time before the period covered by this investigation. Representatives of Goodyear, Dominion, Dunlop and Gutta Percha only, regularly attended, Goodrich having no branches which merchandised mechanical goods as such. In a few isolated instances a representative of one of the all-rubber garden hose manufacturers either attended or was communicated with for advice or information. These meetings have taken place with some regularity at least in the following localities: Toronto, Montreal, Halifax, Saint John, Quebec, London, Winnipeg, Regina, Calgary, Edmonton and Vancouver.

For some periods, meetings have been held as frequently as monthly in at least Toronto, Montreal, London, Quebec and Saint John, with additional meetings when matters deemed to be urgent arose. During the war, meetings were discontinued for a period of a few years in Halifax, but were recommenced in April 1944. The discontinuance of meetings for some period during the war was probably common to other localities, though not to Montreal and Toronto, where meetings have been held most frequently and with greatest regularity.

At the meetings, one branch manager generally acted as secretary taking notes of the discussions and preparing minutes. The minutes contained the decisions of the meetings and the recommendations to the head offices. They were regularly signed by the secretary and sometimes by the other representatives attending. A copy was forwarded after the meeting by each representative to his head office, and occasionally head office personnel attended the meetings. It was the secretary's duty to call the meeting. Failure of any representative to attend sometimes resulted in complaints being sent to the head offices. Branch meetings continued to be held for some time after this investigation was begun in the fall of 1947.

Because not all of the Companies had branches located in the same cities handling mechanical goods, a modification of the above system was necessary in some areas. Dominion had no branch in Saskatchewan, so decisions of branch meetings among the other Companies in that province had to be "cleared" at the meetings in Winnipeg. Similarly, decisions and recommendations made at meetings in Quebec and in London were forwarded to the head offices through the Montreal and Toronto meetings respectively, after they had been "cleared". Saint John meetings were responsible for sales activities in Prince Edward Island. Decisions of Montreal meetings affecting the Ottawa territory were referred to Toronto for confirmation, because Dunlop's Montreal Manager was not responsible for Ottawa.

Probably the most important function of the branch meetings concerned the trade lists. The complexities of the distribution system employed by the Companies, presumed a fairly detailed knowledge of the operations of a very large number of accounts. It would have been extremely difficult, if not impossible in many instances, for head office personnel to express opinions, at all well informed, respecting the qualifications of accounts proposed for the various trade lists, without a recommendation one way or the other from the branch offices. Even if recommendations had been received by the Companies individually, from the field, in many cases the head offices would have been completely dependent on their respective branch office recommendations, which were bound to conflict on occasion. The system was therefore adopted of having branch meetings raise all the issues respecting particular accounts, and recommend those accounts on which there was agreement. This recommendation might take the form of suggesting either an addition to a particular list or a deletion from it. A questionnaire form was provided when an account was to be recommended for addition to one of the trade lists, which was to be filled out in quadruplicate, then signed by all representatives at the branch meeting before it was forwarded to the head offices. The branch meetings were sometimes required to report the combined sales during a stated period by all Companies to the recommended account. Where accounts under consideration were merely branches of companies whose head offices were located in other territories, only tentative recommendations were made, and the proposals were referred to the branch meetings having jurisdiction in the territories of such head offices.

The recommendations of course were not necessarily adopted by the head offices. They were sometimes refused outright and they were sometimes reviewed and returned to the branch meetings for further consideration. Occasionally, even though unanimity was lacking, an account was referred to the head offices, at the insistence of one or more branch managers, and it was listed. An instance of this kind, with the reason for such an exceptional course of action, is contained in a letter dated May 1, 1944 written by G. L. McCrea to W. E. Ecclestone, the Goodyear, Saint John, Manager:

"I have read over your letter of Apr. 20, particularly that part in reference to the adding of R. W. DeWolfe of Wolfville, N. S., to the Spray Pump Manufacturers' List.

While I appreciate the very excellent manner in which you have presented your reasons for objecting to adding the above name to this list, and while I compliment you on your presentation, I have been called upon to make a decision in reference to this listing. It really is a difficult decision to make, for after carefully weighing your objections, I feel that you have a good deal of justification in the stand you have taken; but nevertheless, we have had very strong representations from all three of the other

companies in favor of the listing. In each case, the company has made further investigation before writing me and their insistence on this name being added has caused me to decide in favor of adding this name to the list.

I know this will be quite a disappointment to you, but I do not believe that I could take any other stand in the matter.

When adding names to any of the lists, we have to be very careful that there isn't discrimination used in favor of some accounts over other accounts. We have so many other decisions to make from time to time where we take very definite and what look at times to other companies, arbitrary stands, there must always be concessions on the part of the different companies to work out co-operative plans in the interest of the industry. I know you will realize that I must think of a Canada-wide situation, rather than a local one, and we and the others have tried at all times to appreciate the problems of each other, which is the reason we have been so successful over a number of years in co-operating to the point where our mutual co-operation and understanding of each other's problems has meant a great deal, not only to us as an individual company, but to all the other companies.

I opposed this listing about as much as I could reasonably be expected to do.

.. ."

(Exhibit 1054)

In all cases the recommendations from the branches were merely suggestions and could not be acted upon, that is, the discount appropriate to the list for which the account had been recommended, could not be granted, until the branch managers received instructions to that effect from their respective head offices. The reason for this was that other considerations dealt with only at the head office level might override the views of the branch meeting. One such consideration was the necessity of taking account of the attitude of Griffith, Viceroy, Barringham and Firestone in respect of the lists with which they were concerned. The converse of this was that when any of these firms recommended the addition of an account to the garden hose preferred list the Companies sometimes referred the account to the appropriate branch meeting and its addition to the list was delayed pending a joint recommendation from the branches.

The branches performed another function with respect to the trade lists. Branch representatives were required to meet and to submit joint recommendations whenever a broad revision of the lists was in contemplation. In fulfilment of this responsibility they were active in making recommendations for the considerable revision of the lists which occurred in 1935. From time to time they recommended the establishing of new lists to meet particular situations. They recommended cancellation toward the end of the war of certain special lists set up earlier in the wartime period. At branch meetings specially called for the purpose,

they recommended changes in listings and implemented head office decisions which substantially revised some of the lists in late 1946. Again in mid-1947 many branch meetings were held on the subject of garden hose which recommended changes in the discount structure and in listings, as a result of which, and following instructions from head office, many accounts were dropped from a preferred buying position. The last general review of the lists, of which there is evidence, in October 1947 also necessitated numerous meetings of branch managers to carry out the head office decision to shorten the various lists. Such a project could scarcely have been carried out by the head offices alone without provoking widespread discontent in the trade. With the advice and assistance of branch meetings, it was possible to avoid much dissatisfaction or charges of unfair treatment which, considering the large numbers of accounts involved, was otherwise likely to have occurred.

The second major function of the branch meetings was to promote the observance of the agreements. A variety of steps were taken to secure adherence by all concerned to the agreed price structure. Infractions by any of the Companies were discussed and explained at meetings, or if differences could not be resolved at that level, complaints were made to the head offices. This is illustrated in the following letter, dated August 1, 1947 written by C. N. Larsen to D. R. MacDonald, manager of the Halifax Branch of Gutta Percha:

"This morning I have your letter of the 29th ult. enclosing copy of the minutes of the mechanical meeting held on July 21st. Two important matters apparently arose at the meeting, one dealing with the methods employed by Dominion to secure a fire hose order in New Glasgow and the other accusing us of breaking prices in our sales of rubber belting to B. Garson & Son, Yarmouth and the Oxford Foundry & Machine Company at Oxford.

If the Dominion Rubber wished to quote on fire hose at New Glasgow through Thompson & Sutherland Limited or any other dealer, they should have cleared the matter with the other interested parties. Apparently they did not do so and have no explanation to offer as to why they didn't do so. This matter will be followed through by the various Head Offices.

We assume that the meeting accepted your denial in regard to the prices at which we were selling rubber belting to the firms mentioned above. Certainly, we do not quote jobbers' prices to firms that are not listed as jobbers.

. . ."

(Exhibit 1135B)

Observance of the agreements on prices was promoted in other ways. The origin of goods sold at original equipment prices to original equipment manufacturers and improperly resold, was determined and corrective action taken. The buying position and the name of the supplier of accounts considered to be price cutters were checked into and remedial

action recommended. The following appears, for example, in the minutes of a meeting of Quebec Branch representatives on July 4, 1947:

" . . .

Mr. Deschamps (Goodyear) brought up the question of F.H.P. Belts being sold by H. Roberge of Quebec City who is an A.C. (Allis Chalmers) dealer at a discount to the trade of 63%. This account according to those present is a stocking jobber, and is entitled to 64%. The meeting would like to have this matter clarified and corrected.

. . . "

(Exhibit 1124B)

Requests for better than going prices by particular accounts were sometimes brought up at meetings and jointly refused. On one occasion representatives at a branch meeting suggested that steps be taken to deal with certain garden hose accounts which, in order to retain their preferred listing by maintaining volume, were reselling at preferred prices to non-preferred accounts. On another occasion, branch managers at a meeting agreed to table a list of municipal corporations with whom they had outstanding orders on fire hose, in order to ensure the uniform application of a coming price increase. In general, understandings as to correct prices, work charges, etc. to be quoted were confirmed from time to time at branch meetings.

Other aspects of the overall agreement were likewise under continual observation and checking by the branch managers. Complaints respecting terms granted, such as the quoting of extended terms of payment or the offering of warehousing deals were brought up at meetings, and promise of future adherence to the agreements secured. The rulings regarding the quoting of firm prices, free goods and sales of remnants were reaffirmed from time to time. So too was the ruling regarding freight charges. In this connection, prior to the war, the branch managers had authority to determine by joint action the places which were to be considered prepay points in their respective territories.

An allied function of the branch meetings was the clarification of existing agreements and the suggestion of modifications to make them more effective. Pricing instructions received from head offices were checked at branch meetings and discrepancies referred back for revision. Branch managers at one meeting complained of their failure to receive simultaneous price change notifications. Branch meetings requested rulings on various matters, for example, on the terms of sale to be quoted on chain strapping to manufacturers, on the commission to be paid to local dealers on the sale of lead-in hose, and on whether or not contract dealer prices on V belts could be extended to contract dealers of other companies. They requested clarification of the qualifications required for addition to some of the lists. On one occasion, some branches having two distinct lists covering one product - a Suction Hose Fire Engine Equipment Manufacturers List and a Chemical Engine Hose List - and others only one, a branch meeting pointed out the confusion to the head offices, and asked for clarification.

Suggestions by the branch meetings directed towards making the arrangement more effective, covered many features of the overall agreement, though they were primarily concerned with the trade lists. However, the branch meetings have touched on such matters as recommending standard construction; recommending that the commission paid to salesmen on fire hose orders be made uniform thus requiring a reduction in the commission paid by Dunlop, in order to prevent the difference in commission being used to influence orders; and recommending that quotations on fire hose to municipalities be made direct from the branches and not through local dealers.

More than a little of the time of branch meetings over a long period of years, but particularly before the war, was taken up in reporting and recording imports known to have reached the area for which the meeting in question was responsible. At times considerable effort was made to determine who the foreign supplier was, and to discover the identity of the importer through whom distribution was being effected. All information secured relating to imports was reported in the minutes to the head offices, enabling them to gauge the effect of competition from imports which could be expected when they were contemplating modifying the price structure either upwards or downwards. The branch meetings also sometimes recommended the listing of accounts which were known to have been importing mechanical goods, so that by selective price concessions the Companies could retain the business in Canada without modifying the overall price structure.

A final important responsibility of the branch meetings had to do with quoting on requests for tenders. Sometimes when the branch offices were to do the actual quoting, the tenders of each of the Companies were checked for uniformity at the branch meetings prior to the quotations being made. At a meeting of the Montreal Managers on July 4, 1947 for example, the following was recorded in the minutes:

" . . .

The question of comparing prices on quotations to Federal Government Departments was discussed and it was agreed that for the sake of accuracy quotations would be compared in the future.

. . ."

(Exhibit 1098B)

On other occasions, the tenders which had been made were checked for discrepancies. For example, the following appears in the minutes of a branch managers' meeting in Montreal on April 3, 1944:

" . . .

One of the representatives raised the question as to the price quoted National Research Council, Ottawa, on 2- $\frac{1}{2}$ " Underwriters' Fire Hose and all representatives were requested to check their quotations for date of Tender, Price and Discount and be prepared to discuss the item at the next meeting.

. . ."

(Exhibit 1305)

The following is an extract from the minutes of the next meeting held on May 9, 1944:

". . .

The question raised regarding National Research Council, Ottawa, on 2½" Underwriters' Fire Hose was satisfactorily explained to the representative raising the question.

". . ."

(Exhibit 1304B)

For many years, branch managers in certain areas were required to consult with one another before it was permissible for any of them to quote municipal corporations on their requirements of fire hose, through local dealers. In other areas the branch meetings decided whether or not it was necessary to consult before fire hose could be quoted through dealers. Failure to clear the question of quoting through local dealers at branch meetings, where consultation was deemed necessary, was responsible for a number of complaints and for subsequent remedial action. A watch was maintained by branch managers on fire hose sales made by the Bi-Lateral Company, the exclusive sales agent for Goodrich on this product, and reports of such sales were from time to time recorded in the minutes. On at least one occasion branch minutes recorded a complaint by local managers of Bi-Lateral's selling activities when they were considered inimical to the industry arrangements.

Care was taken to prevent the fact of the cooperative arrangements in the mechanical rubber goods industry from becoming known to customers, but owing to the nature of the arrangement and the practices adopted by the branches this was not always possible. Many customers must have suspected the existence of the arrangement as a result of the uniformity of treatment they received from the branches of the Companies. Some customers merely accepted the situation. For example, on February 11, 1946 the Purchasing Agent of Quebec Salvage and Wrecking Company, Limited, wrote to D. R. MacDonald, Branch Manager for Gutta Percha in Halifax:

"With further reference to our telephone conversation of last Saturday about having this Company placed on the jobber's discount list. . . .

It is to be hoped that at the next meeting of the various Rubber Companies, you will be able to grant this Company the discount in question."

(Exhibit 1324B)

Other customers attempted, with very little success, to break the structure. An example of such an attempt is referred to in a letter dated April 17, 1947 written by C. N. Larsen (Gutta Percha) to G. L. McCrea (Goodyear) with copies to Messrs. Davis (Goodyear), Nicholls (Goodyear), Pritchard (Dunlop), Buchanan (Dunlop), Bergeron (Dominion), Dunn (Dominion), Coon (Gutta Percha) and Dawson (Gutta Percha). The letter reads:

"At our meeting last Friday, reference was made to an order for a log conveyor belt that Commercial Equipment Limited, Saint John, was reported to have obtained from Saint John Sulphite Ltd. and which we were informed they had placed with Dominion Rubber Co. Mr. Bergeron stated that his Company had not received the order although they had been approached by Commercial Equipment with a request for a special price, claiming they had obtained same formerly from Gutta Percha. I felt sure that this statement by Commercial Equipment was incorrect but I wrote our Saint John Branch Manager for a report. I quote from his letter as follows:-

'We can assure you that if anyone stated we offered 5% to Commercial Equipment Ltd. on the conveyor belt in question, this is incorrect for we have not discussed the matter of price with them. As far as I can recall, we have not at any time sold conveyor belting to Commercial Equipment and whatever transactions we have had with them were strictly in accord with our regular selling policy, and we at no time allowed them any special commission or allowance.'

It would appear, therefore, that this is an attempt on the part of the buyer to break down prices."

(Exhibit 1246)

Another example is contained in a letter written on July 18, 1946 by the Director of Purchases for International Milling Company to A. E. Smith, Manager, Western Division for Goodyear in Winnipeg:

"Since writing you yesterday on tires, we have given some thought to our belting and mechanical goods purchasing in Canada. As I understand the situation, everyone is supposed to charge the same price but how long this condition will prevail is problematical.

The thought that passed through my mind was that there apparently is no place in the program where a multiple plant operator receives any better discount than the firm with one plant, no matter how small, which to my way of thinking, is not right. By the same token, it would seem much more simple for you to get your orders in the mail rather than having a man go out, survey the situation and then lose about 50% to 75% of the orders or whichever part your competitors are able to take away from you. . . . All of these ideas work down to the subject of price and whether or not, in your opinion, the volume that we have, if turned into one pool, would justify a confidential price set up.

. . ."

(Exhibit 1109C)

Despite the force of this argument, no evidence was disclosed that any price concession was made to International Milling Company on mechanical rubber goods and, indeed, the recorded instances of deviation by the branches from any of the agreements are not common.

Chapter 14 - Special Products

A. V. Belting

(a) Multiple V Belts

As indicated earlier in this Report, there are two main classes of V belts - Fractional Horsepower (F.H.P.) belts used on many kinds of small motors, and multiple V belts which are larger belts mounted in parallel on transmission drives. Dunlop and Goodyear are the only Canadian manufacturers of multiple V belts. Multiple V belt drives were an innovation introduced in the United States by the Allis-Chalmers Manufacturing Company about 1926 or 1927 and were first sold in Canada by Canadian Allis-Chalmers Limited, manufacturers of heavy mining and hydraulic equipment, etc. The Canadian company originally purchased its requirements of belts for these drives from Goodrich in the United States, then Goodrich in England, who manufactured multiple V belts under licence from the Allis-Chalmers Manufacturing Company. This company held a patent covering multiple V belts which strictly speaking related to the mounting of the belts on the sheaves rather than to the manufacture of the belts themselves. Dunlop in Canada, had for a time been manufacturing such belts and buyers mounted them as they saw fit. However, when the patent was challenged and upheld by the courts in the United States, Dunlop recognized the patent, since the patent could be employed to stop Dunlop's customers from mounting V belts together, and was licensed by Canadian Allis-Chalmers Limited to manufacture and sell V belts for multiple drives. Although Dunlop was the first manufacturer, Goodyear was the first company in Canada actually licensed by Canadian Allis-Chalmers. Goodyear began manufacturing multiple V belts about 1932 or 1933, and has continued since that time to supply the requirements of Canadian Allis-Chalmers who sell but do not manufacture the belts.

Canadian Allis-Chalmers received a 2 per cent royalty on the sale of multiple V belts manufactured by Dunlop and Goodyear. Under the licensing arrangement, Canadian Allis-Chalmers substantially controlled the pattern of distribution and sale of all multiple V belts produced in Canada. In addition, Canadian Allis-Chalmers licensed under the patent a number of multiple V belt drive manufacturers.

It appears that Dunlop and Goodyear were required, under their licensing arrangements, to adopt the same prices as Canadian Allis-Chalmers. The discount structure is set out in a page dated June 10, 1937 from an old Dunlop confidential price book. Although the page is dated 1937, the text was probably taken from an earlier price book.

" . . .

Arrangements have been entered into with the Canadian Allis Chalmers Co. whereby we are licensed to manufacture and market 'V' Belts for Multiple Drives only under Canadian (Geist) patent No. 275626 and accordingly the old trade classification and discounts are cancelled and superseded by the following set-up.

1. Consumer 49% Tax included
2. Dealer for Resale 54% Tax included
3. Contract Dealer 63% Tax extra
4. Original Equipment Mfr. 63% Tax extra
5. Sheave Mfr. 68% Tax extra

(These discounts were to be taken off a published price list. The discounts were intentionally set very high to permit price changes to be made by varying the discounts rather than by publishing new price lists.)

. . .

These classifications are defined as -

1. CONSUMER.

Purchaser - whether large or small, who buys for own use. No further discount for volume or any other reason.

2. DEALER.

Purchaser for resale not otherwise provided for in this schedule i.e. dealer's and resale depots doing an ordinary pick-up business in any manufacturer's belt.

3. CONTRACT DEALER (see list).

Purchaser for resale who by a definite agreement obligates himself to represent exclusively one licensed sheave manufacturer and/or one licensed 'V' belt manufacturer in the sale of their products, viz. - sheaves (and parts thereof) and multiple 'V' belts.

A DUNLOP Contract Dealer is one who would sign an agreement to confine their sales to DUNLOP belts exclusively and who would aggressively push the sale of our belts as well as maintain resale prices and in all other particulars abide by the agreement entered into.

4. ORIGINAL EQUIPMENT MFR. (see list).

Purchaser of drives (or parts thereof) for use as an auxiliary or integral part of machinery manufactured by them for resale. Manufacturers of Pumps, Fans, Blowers and all other types of machinery of which the belt is a part, come in this category.

5. SHEAVE MFR. (see list).

A very restricted class of account who may be considered as manufacturers and distributors of 'V' belt drives under direct license and who are qualified to handle the engineering detail involved in the sale of complete drives.

. . .

Accounts in classifications 3, 4 and 5 are officially listed as shown. Under no circumstances can a branch or salesman quote better than Retailer's price (class 2) unless that firm is officially listed.

Contract Dealer's signed up by the opposition are distinctly their accounts and as far as Multiple 'V' Belts are concerned are not to be solicited by us. The same right is, of course, reserved for our accounts.

. . ."

(Exhibit 1454)

On February 10, 1938 H. S. Pritchard (Dunlop) wrote to G. L. McCrea:

"'V' BELTS FOR EXPORT - MASSEY-HARRIS CO.

Confirming our several conversations on this subject, I discussed with Mr. Hilchie (then General Manager) of the Canadian Allis-Chalmers Company our position as Manufacturers of 'V' Belting in Canada, when it came to competing against American Manufacturers for business being placed by a Canadian Manufacturer, covering 'V' Belts for shipment into a foreign market. Mr. Hilchie indicated that under these circumstances we were free to take whatever action our Company decided on.

. . .

In the case of the present inquiry from Massey-Harris, we are quoting an export rebate of 13% as agreed on with you verbally."

(Exhibit 1036)

The last paragraph in the above extract and other evidence indicates a common price structure and an extension of the general agreement among the Companies to some aspects of the merchandising of multiple V belts, during the life of the patent.

In 1941 Goodyear and Dunlop attempted to bring the method of merchandising multiple V belts more closely in line with that used for other mechanical rubber goods. S. G. Nicholls (Goodyear) wrote to H. R. Hilchie (Canadian Allis-Chalmers) on November 7, 1941 confirming various changes in the lists of buyers of multiple V belts and concluding:

". . .

In view of the differences that seem to come up from time to time and the amount of checking that is entailed, we suggest that a 'WORK SHEET' be made up which could be adopted by us all for our respective price book pages.

As any changes were made in the lists, a new sheet could be forwarded to those interested and their own price books changed accordingly.

I have discussed this with Mr. Pritchard when we were clearing up the items recorded above, and he is in accord.

If you agree with the suggestion, we were hopeful that you would have 'Work-Sheet' prepared which we could all adopt now that all lists are being corrected to-date."

(Exhibit 1040)

Such sheets were prepared and circulated to those interested by Canadian Allis-Chalmers. Certain information respecting discounts, etc. on multiple V belts had previously been recorded in the mechanical work book maintained by each of the two Companies.

In 1945 Dunlop arranged to manufacture multiple V belts for Gutta Percha. In his letter of October 29, explaining the manufacturing arrangement to J. R. Belton, the General Manager of Gutta Percha, C. N. Larsen also outlined the situation with respect to merchandising as it existed at that date:

"We have entered into an arrangement with the Dunlop Tire & Rubber Goods Co. Limited whereby they manufacture our requirements of Multiple 'V' Belts. The brand name we have selected is 'DURACORD'. Only two firms manufacture these belts in Canada at the present time, namely Goodyear and Dunlop, although other firms have them made for them, notably Allis-Chalmers and Link Belt and United Steel Corporation and Plessisville Foundry. . . .

Heretofore firms manufacturing these Multiple 'V' Belts had to take out a license with the Canadian Allis-Chalmers Company and the conditions of sale have been very rigidly maintained. The Geist patent held by Canadian Allis-Chalmers, expires next month but Mr. Pritchard of Dunlop does not think there will be any breakdown in selling conditions as everyone handling 'V' Belts so far has found it advantageous to maintain those conditions.

There are five buyer classifications and the discounts are as follows:-

- | | |
|------------------------------------|---------------------|
| 1. Consumer | - 49% tax included. |
| 2. Dealer for resale | - 54% tax included. |
| 3. Contract dealer | - 63% tax extra. |
| 4. Original equipment manufacturer | - 63% tax extra. |
| 5. Sheave manufacturer | - 68% tax extra. |

Nos. 3, 4 and 5 are all listed accounts. The price at which we buy from Dunlop is a discount of 63%, tax extra, with a further 20%, f.o.b. Toronto, 2% 10th of month following shipment.

. . ."

(Exhibit 1441)

That it was the intention of the interested companies to continue the selling arrangements affecting multiple V belts which had existed under the patent, as suggested by Mr. Larsen, is confirmed in the following exchange of correspondence. On December 7, 1945 G. V. Davis (Goodyear) wrote to H. R. Hilchie (Canadian Allis-Chalmers):

". . .

It is understood the Geist patent is now terminated and you do not now hold authority to issue license to manufacture under this patent.

It is also understood that our Royalty payments will cease on Dec. 31, 1945.

You and I have discussed this subject of Royalty on one or two different occasions and while you no longer control distribution under patent, we are certainly hoping that you will continue, as in the past, to keep a weather eye on marketing and distribution of this product. We are sure that Dunlop feel the same way regarding it, and some day soon, we shall try to make a luncheon appointment with Mr. Pritchard to discuss it."

(Exhibit 1592)

Mr. Hilchie replied on December 10, 1945 sending a copy of his letter to H. S. Pritchard:

"We have your letter of December 7th with reference to our control of the Geist patent applying to the manufacture and sale of multiple 'V' belt drives. This patent, as you know, expired on November 21st and it is, therefore, unnecessary that you pay royalties covering sales of belts after that date. It is definitely our intention to handle this line under the same procedure as in the past which, I believe, has been satisfactory to all concerned.

With this in view, it will be a pleasure to co-operate with you and the Dunlop Tire Goods Company and I feel that no change in sales policy should be adopted unless by agreement between us. . . ."

(Exhibit 1593)

That the selling arrangements which had been built up while multiple V belts were being manufactured under patent were in fact continued, is indicated by reference to such documentary evidence as the following letter, written by G. L. McCrea (Goodyear) on June 18, 1946 to Mr. Pritchard, copies being sent to Messrs. Hilchie and Davis:

"As arranged between Mr. Hilchie and yourself, we are adding to the Sheave Manufacturers' List on E. C. Cord Multiple V Belts, the name of:

Lloyd M. Bettger - Monkton, Ont.

The purpose of this letter is to re-affirm that in the future, no other names will be added to this particular list without previous consultation, nor will these prices be quoted to anyone previous to listing."

(Exhibit 1596)

(b) Fractional Horsepower Belts

Fractional horsepower belts were introduced to the Canadian market somewhat later in the 1930's than were multiple V belts, and gradually replaced another type of belt manufactured by a different process which had been used for similar purposes. Until 1945, when Goodrich began limited production, Goodyear and Dunlop were the only Canadian manufacturers of F.H.P. belts as they were of multiple V belts. The evidence indicates arrangements relating to these belts over a considerable period of time. When Goodrich was preparing to undertake the sale of F. H. P. belts, they, also, became involved in negotiations relating to these belts. The following letter indicates some of the early steps that were taken in this connection. On December 8, 1939 S. G. Nicholls (Goodyear) wrote to H. P. Hawkins (Goodrich):

"Washing Machine and Refrigerator Belts & other
non-standard F.H.P. sizes."

After you left the office we had a considerable discussion in respect to lining up the different sizes of the above mentioned belts.

We found that in order to make a comprehensive study a number of hours work was involved in lining up Mr. Pritchard's belts and our own.

...

In the meantime, it is understood by Mr. Pritchard's company and our own that there will be no change whatsoever in connection with the prices at present in force. Nor will we approach any of the companies mentioned in our discussion, in regards to prices; further, we will instruct our staffs - should any enquiries arise from the companies discussed, particularly, Connor, Brantford and Kribs - that no decision will be made until the study has been completed next week and prices decided upon by those at the meeting to-day."

(Exhibit 1078A)

The general rule arrived at for treating non-standard sizes was set out in a letter from S. G. Nicholls to Goodyear's Montreal branch on June 25, 1940:

"...

Our arrangement with the other Rubber companies is that we will quote and supply F.H.P. belts wherever possible, and where it is not

possible to supply concerns with F.H.P. belts in the exact size that they require, that the price basis we use on any special belts that we make will be in line with the price of the closest size belt in the F.H.P. line-up."

(Exhibit 1083)

The arrangement with respect to belts supplied to certain original equipment manufacturers and the reasons for it are outlined in two letters written by S. G. Nicholls to Goodyear officials at the Montreal branch on July 3, 1940. The first letter reads in part:

"... the arrangement made when the F.H.P. line was introduced was that we would still supply M belts for original equipment to concerns to whom we had previously been supplying M Belts.

It was felt that there would be too great a reaction from the manufacturers of washing machines, refrigerators, etc., to whom we were supplying M Belts as original equipment, if we applied at once the F.H.P. prices. Therefore, we undertook to continue to supply belts for original equipment, the factory branding them just as though we had not used the F.H.P. equipment.

...

Prices, however, should be increased even though the belts are for original equipment and we suggest 20-25%."

(Exhibit 1109 EE)

The second letter was in part as follows:

*Prior to the introduction of the F.H.P. line there was considerable price cutting on special belts - our M line, and when the F.H.P. line of belts was introduced an arrangement was made whereby Dunlop and ourselves undertook to quote any new accounts prices equivalent to the F.H.P. list and discounts on any new M Belts that were bought.

The understanding, of course, was that where we had been supplying M Belts for original equipment to washing machine and refrigerator manufacturers, etc., that we would not quote lower prices on M Belts than had been quoted previously and that we would endeavour to get higher prices even from the original equipment manufacturers and 'clear' such new prices as were adopted."

(Exhibit 1084)

That the arrangement to quote prices on M belts, equivalent to F. H. P. prices was implemented, is indicated in a letter of July 9, 1940 from J. W. Wright of Goodyear's Montreal branch to S. G. Nicholls:

"...

A recent letter received from you advised us that 'M' belts were to be sold at a price corresponding to the closest F.H.P. belt and

this automatically jumped prices on 'M' belts 100%, . . .

. . ."

(Exhibit 1109 FF)

The discount structure and customer classification for the sale of F.H.P. belts were somewhat similar to those for multiple V belts, and resale price maintenance was a feature of sales policy as appears from a letter of February 10, 1941 quoted earlier, from H. S. Buchanan to R.M.B. Millar on the occasion of Dunlop's undertaking to manufacture specially branded F.H.P. belts for Goodrich:

" . . .

There is just one item which we would like to confirm with you and that is, in the resale of these Belts, both by your Company and by your Distributors, that the schedule as established by the industry, will be maintained. I am quite satisfied that you understand this, but in order to avoid any possibility of future complications, we would appreciate your acknowledgment that this is thoroughly understood.

. . ."

(Exhibit 1439)

The following evidence indicates that when a change was made in the general provisions covering shipping charges, F.H.P. belts, like multiple V belts, were brought into line with other mechanical goods. A letter written on February 19, 1947 by H. S. Pritchard (Dunlop) to G. V. Davis (Goodyear), copies being sent to Messrs. Dawson (Gutta Percha) and Hilchie (Canadian Allis-Chalmers), reads:

" . . .

It is a matter of regret that no answer was given to Mr. Dawson on his letter of 17th October, 1946, at which time, he pointed out that Victoria, B.C., a recognized Branch Point for Mr. Dawson's Company, and a Special Agent's Point for ours, is not shown as a prepaid point for Multiple 'V' Belts.

We quite willingly agree that this provision should be made and feel sure it will be agreeable to Mr. Hilchie and yourself.

In fact, since you are consulting with Mr. Coon, of Mr. Dawson's Company, regarding the new arrangement on all industrial lines, to prepay freight on 100 pounds and over, I would appreciate it if you would explain our position in regard to this move to Mr. Hilchie, so that the same arrangement will apply to Multiple 'V' Belts and F.H.P. Belts as we intend to make standard in the case of industrial rubber goods. Even under this arrangement, Victoria should be listed as a prepaid point, since it is a Branch for at least one Company and a Special Agent Point for a number of others."

(Exhibit 1257)

Work sheet page 138, dated December 17, 1948 shows that F.H.P. belts were treated the same way in the matter of freight charges as other mechanical rubber goods, after the change initiated by the above letter was made.

In 1945 Goodrich began manufacturing its own F.H.P. belts and this fact probably contributed to the revision of the merchandising program which was undertaken in that year. A revised resale program with new trade classifications was proposed by R. M. B. Millar (Goodrich) and circulated to those interested. On November 7, 1945 a meeting was held in the Rubber Association offices attended by Messrs. Millar (Goodrich), Hawkins (Goodrich), Pritchard (Dunlop), McCrea (Goodyear), Davis (Goodyear) and Hilchie (Canadian Allis-Chalmers). This meeting discussed the suggested program and concluded that it could not be implemented at that time, owing in part to the limitations imposed by price controls. Following the meeting, G. V. Davis wrote on November 8, 1945 to R. M. B. Millar, sending copies to Messrs. Hawkins, Pritchard, Hilchie and McCrea:

"I believe we are all agreed that our sales policy on the subject product leaves much to be desired. However, we feel that it is impossible to change it at the present time and it is my understanding that we shall continue to market F.H.P. Belts for re-sale on our present basis.

At the present time we are selling F.H.P. Belts to the Original Equipment Manufacturer on a quantity basis at prices ranging from 57 to 73% off List. This present basis will be discontinued.

A new basis of sale to Original Equipment Manufacturers will be List, less 76%, Sales Tax not included.

Manufacturers' prices will be extended only to any firm or corporation buying belts to become part of new machinery or equipment. Such accounts may only purchase at O.E.M. prices when they can quote a Manufacturer's Sales Tax License number; otherwise, regular re-sale prices will apply.

All accounts purchasing belts at O.E.M. prices shall take shipment direct from manufacturer's branch or factory and shall be shipped bulk, without sleeves.

Please confirm that the above is your understanding, which is released immediately on receipt of this letter."

(Exhibit 1575)

The evidence indicates that it was not until late in 1947 that the major revision in sales policy on F. H. P. belts was finally adopted, although on April 4, 1946 G. V. Davis wrote to H. S. Pritchard, sending copies to Messrs. Millar and Hilchie "confirming recent conversations" on the subject of sales of F. H. P. belts to Ford, General Motors and Chrysler. He referred to an arrangement under which these companies had been enjoying, during the period of heaviest war production, a more favourable discount than they had enjoyed during the basic period. He went on to suggest that they now revert to the pre-war discount of 57 per cent from list and stated: "I should appreciate it if each of you, if you are agreeable, will confirm this understanding". H. S. Pritchard replied to G. V. Davis on April 5 sending copies to Messrs. Hilchie and Millar expressing agreement with the proposal and concluding: "When you have heard from the other interested parties will you please release this item in the usual way". On April 8, H. R. Hilchie replied to Mr. Davis sending copies to Dunlop and Goodrich also concurring in the proposal. The evidence does not disclose what, if any, reply was made by R. M. B. Millar.

Again, on February 10, 1947 G. V. Davis (Goodyear) wrote to H. R. Hilchie (Canadian Allis-Chalmers) in part as follows:

"Confirming telephone conversation of today, while we are not able to locate the Minutes of the meeting at the present moment, we are confident that the understanding at that time was in accordance with the attached price list.

I am sure you will recall Mr. Hawkins stating that the Goodrich Company wanted the O. E. M. accounts to get the lowest price; in other words, they didn't want anyone monkeying with the O. E. M. accounts other than the Rubber Companies."

(Exhibit 1583)

Dunlop received a letter from Canadian Tire Corporation Limited on June 27, 1947 reading as follows:

"Since we agreed several months ago to increase our selling prices on FHP Belts, we have had a number of complaints from stores all reading the same and to the effect that local merchants are underselling them.

...

At the time we agreed to these prices we felt that they were very high but as you stated that we would not be undersold we agreed to them. We, therefore, cannot agree with you in this respect and shall be obliged to revert to our former prices unless you can give us some assurance that conditions as they exist today will be corrected."

(Exhibit 1433)

That prices on F.H.P. belts should appear high to the Canadian Tire Corporation officials is not surprising when reference is made to the discount structure. In 1945 when R. M. B. Millar (Goodrich) first proposed a major change he circulated to Messrs. Davis (Goodyear), Fritchard (Dunlop), Hawkins (Goodrich) and G. B. Smith (Secretary of the Rubber Association) a comparison of the existing and proposed resale program on F.H.P. belts. The existing program appeared as follows:

"FRACTIONAL HORSEPOWER BELT RESALE PROGRAM
PRESENT AND PROPOSED

<u>Detail</u>	<u>Present Program</u>	<u>Proposed Program</u>
Base List Price of Belt	\$ 1.00	...
% discount to Domestic Consumers	14%	...
Net Retail Selling Price to Domestic Consumers	.86	...
% discount to Industrial Users	35%	...
Net Selling Price to Industrial Users	.65	...
% discount to Stocking Dealers	48%	...
Net Selling Price to Stocking Dealers	.52	...
% discount to Jobbers	66%	...
Net Selling Price to Jobbers	.34	...
% discount to Contract dealers (list less 76% plus 8%)	74%	
Net Selling Price to Contract Dealers	.26	
Subject discounts for each class of purchaser to apply on any quantity of belts.		

All prices include Federal Sales Tax."

(Exhibit 1005C)

It will be seen that on a belt for which the Companies charged the contract dealer 26 cents, the domestic consumer was required to pay over three times that figure, or 86 cents. Under the new program now to be referred to, these figures were still 30.24 cents and 75 cents respectively.

The new merchandising program finally adopted in December 1947 was summarized in a letter dated December 17, 1947 written by S. G. Nicholls (Goodyear) to N. C. Lowe, then Sales Manager of Allis-Chalmers:

"We are attaching particulars of the new Selling Conditions' and Discounts adopted for Fractional Horse Power Belts. This new basis is being made effective January 2, 1948 and released by us on December 24, 1947, . . .

. . .

Discounts from Fractional Horse Power List:

- | | |
|--|-----------------------------------|
| (1) Domestic Consumers (any quantity) | 25% Sales Tax included |
| (2) Industrial Consumer (any quantity) | 40% Sales Tax included |
| (3) Dealer (purchasing for resale) | 55% Sales Tax included |
| (4) Distributor - (New Distributors must
buy 2500 belts original order) | 72% Sales Tax <u>Not</u> included |
| (5) Original Equipment Manufacturers
buying belts to become part of new
machinery or equipment they make | 72% Sales Tax <u>Not</u> included |

. . .

'Distributor' replaces the former 'Contract Dealer' classification. The present listed Contract Dealers now become Distributors.

The 'Stockist Jobber' classification is dropped. This means an immediate reclassification of present Stockist Jobbers. Most of them should be quoted Dealer Price, but there are some that may be made Distributors.

. . .

We are expecting to have shortly a complete list of Distributors, and just as soon as that information is available, we shall send it to you."

(Exhibit 1584)

The conditions of sale recorded in this letter correspond with those set out on page 4A of the mechanical work books of all Companies. The discounts shown here are the same as those recorded on page 4B, dated December 2, 1947 in the work books of Dunlop, Goodrich and Dominion although they are slightly different from those shown on the page issued later dated April 7, 1948 in the work books of Goodyear and Gutta Percha. The work sheets also make clear the continuing policy of the Companies of price maintaining F.H.P. belts to the various classes of customers. The intention of the Companies to adhere to the new program is indicated in a letter dated April 28, 1948 to a Goodrich representative from R. M. B. Millar:

"Attached is an Approved Request to establish the subject account as an F.H.P. Belt Jobber, subject to the following.

. . . your letter does not specifically state that this account has been able to buy Goodyear F.H.P. Belts direct from Goodyear under the current jobber program since January 2nd., 1948.

Here is the point that must be thoroughly cleared and that is, if this account since January 2nd., 1948, has and is being recognized as a jobber by one of the Canadian belt suppliers, you are free to accept this account on our jobber program without the initial stock of 2500 belts.

If this account is not now enjoying jobber prices on F.H.P. Belts from some Canadian supplier, then before you can extend jobber prices, it will be necessary to secure an order for 2500 belts.

We will definitely not be placed in a position of taking on an account on a jobber basis without the 2500 belt qualification if it happens to be an account which Goodyear or some other belt supplier has removed from jobber listing under the new program, to do so would simply destroy the strength of the program which we have worked so hard to develop.

. . . ."

(Exhibit 1497)

B. Garden Hose

The volume of sales in Canada of cotton content garden hose appears to have been much greater than the volume of sales of all-rubber garden hose. However, because these products are competitive, though Goodyear, Dunlop, Dominion and Gutta Percha have had only a limited interest in the manufacture or sale of all-rubber garden hose themselves, they have reached an understanding with the majority at least of the principal manufacturers of all-rubber garden hose only. The production of all-rubber garden hose in Canada was originated by Viceroy, followed by Griffith about 1930, and its manufacture was taken up by the other companies at later dates. Its production has since been dropped by some of the cotton content manufacturers and was discontinued for a period during the war by Barringham, Viceroy, Firestone and Griffith.

All-rubber garden hose has been produced to some extent as a "filler-in" because resources can readily be switched to its production, a relatively simple process, and because it is easily stored. These characteristics have made it more difficult to secure complete and uninterrupted adherence to a price agreement than has been the case with other types of mechanical rubber goods. Since all-rubber garden hose has been produced occasionally with the immediate object of avoiding temporary interruptions in production, with the resultant loss of skilled labor, some of the Companies have been tempted to deviate from the agreed prices in order to move their stocks of hose. For this and other reasons there have been breakdowns, from time to time, in the Group arrangements. These latent reasons for the possible weakening of the price structure have been reinforced to some extent by the existence for a considerable part of the period of a small manufacturer of all-rubber hose outside the Group. Prior to the war a small company in Beamsville, Ontario manufactured all-rubber garden hose, but it discontinued production in the early war years. Since the end of the war a Toronto company outside the Group has taken up the manufacture of all-rubber garden hose in small quantities. A further reason for the somewhat greater difficulty experienced in securing continuing adherence to the arrangement covering garden hose than was experienced in connection with other mechanical rubber goods was of course, that nine manufacturers were

concerned in the former case whereas in the latter case the number of manufacturers involved ranged from two to five, depending on the product.

The Companies have dealt with garden hose under the work sheet system and to some extent the system has been extended to the Group. Two classes of buyers were set up for the merchandising of garden hose - preferred and dealer accounts. Qualifications for preferred listing were for a period either recognition by the Group as a legitimate wholesaler or the purchase by a retailer of at least 5,000 feet of garden hose during a season. On occasion, the Companies agreed to report their sales of garden hose to certain accounts, so that the combined purchases by them could be considered, and a decision made as to whether or not they should continue to receive preferred treatment. Ordinarily, an account recommended for listing by any of the all-rubber hose manufacturers was referred by Goodyear, Dunlop, Gutta Percha and Dominion to the appropriate branch meeting. The listing was held in abeyance until a favourable recommendation was received. If meanwhile, consent to the listing had been received from the other all-rubber hose manufacturers, the account was then added to the list and a clearance letter issued by Goodyear. On occasion, when branch meetings were not consulted, they protested what they at times considered unjustifiable additions. The branch meetings too made joint recommendations for the list as they did with other mechanical goods. In the case of garden hose however, such recommendations were not dealt with alone by the head offices, but were circulated to the other companies in the Group for approval. The same considerations affected the removal of names from preferred listing.

Complaints of price cutting, for the reasons described above, were more frequent in connection with garden hose than with any of the other mechanical goods but the correspondence does not disclose any major breakdown of the arrangement. During all the years from 1935 to 1949, for which considerable documentary evidence respecting garden hose is available, the agreement appears to have weakened most in 1941. Even then before the year was out, the agreement among the Group relating to the merchandising of garden hose appears to have been reaffirmed and the evidence indicates that it was being adhered to without significant change. The first known complaint was recorded early in 1941 by S. G. Nicholls (Goodyear). On January 9 he wrote to J. M. S. Carroll (Dominion) sending copies to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), J. A. Wilson (Viceroy), Hawkins (Goodrich), E. N. T. Griffith (Vice-President of Griffith), J. D. Tenison (Firestone) and E. Barringham (President of Barringham) as follows:

"A report has been received that the following prices have been quoted to a Garden Hose Preferred List account in Victoria, B.C.:

All-Rubber Garden Hose

50 ft. lengths, coupled - \$2.30 length.

25 ft. " " - 1.20 "

Sales Tax Included; F.O.B. Victoria.

The Garden Hose Preferred List prices, couplings attached, are \$2.65 and \$1.392 respectively.

We understand that 10,000 feet will be purchased.

Our Branch has been advised that we have no price to offer other than the regular prices."

(Exhibit 1347A)

Mr. Griffith replied on January 17:

" . . . we wish to report that our company has not quoted any Victoria firm."

(Exhibit 1347B)

Mr. Scott replied on January 18:

" . . .

We have taken the matter up with our Vancouver and Victoria Branches and any prices that have been quoted to concerns in Victoria have been on the proper basis.

. . ."

(Exhibit 1347C)

On January 20 Mr. Carroll replied:

" . . . we have been in touch with our Vancouver Branch and can advise you that any prices quoted by our Company in Victoria, B.C. have been on the proper agreed basis."

(Exhibit 1347D)

On January 21 Mr. Buchanan replied:

" . . . This business was not placed with our Company, nor did we quote an improper price.

. . ."

(Exhibit 1347E)

Mr. Wilson replied on January 22:

" . . . we have not quoted anywhere, prices on All-Rubber Garden Hose other than those established."

(Exhibit 1347F)

Edward Barringham replied on January 29:

" . . . this business was not placed with our company nor have we quoted anything other than the regular agreed price set up.

. . . "

(Exhibit 1347G)

H. S. Buchanan (Dunlop) on January 29 wrote to S. G. Nicholls (Goodyear) suggesting he endeavour to secure particulars of this transaction from the companies, Firestone and Goodrich, who had not yet replied. Apparently however, before this situation had been cleared up, Mr. Buchanan had a second complaint to lay before the Group. On February 24, 1941 he wrote to G. L. McCrea (Goodyear) sending copies to Messrs. Carroll (Dominion), Pritchard (Dunlop), Hawkins (Goodrich), Scott (Gutta Percha), Wilson (Viceroy), Barringham (Barringham), Nicholls (Goodyear), Griffith (Griffith) and Tenison (Firestone):

"I have before me a clipping from T. Eaton Company's Advertisement in a Montreal Paper, which reads as follows:-

'All Rubber Corrugated Garden Hose complete with Couplings,

. . .

25 ft.
\$1.19

50 ft.
\$2.37'

In view of the fact that the G. H. Preferred Price on all Rubber Garden Hose Coupled works out to \$2.36 per 50 ft. length, this advertisement leaves room for speculation as to the basis on which the hose was purchased.

. . . "

(Exhibit 1346A)

Replies were received from some of the Group including J. D. Tenison of Firestone stating they had not sold garden hose to Eatons in Montreal.

On May 2, 1941 R. M. B. Millar (Goodrich) wrote to G. L. McCrea (Goodyear), copies being sent to Messrs. Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Griffith (Griffith), Nelson (Firestone), Carroll (Dominion), Wilson (Viceroy) and Nicholls (Goodyear) with a further complaint:

" . . .

We believe that you will recall at our last meeting concerning Garden Hose, which was in October 1940, that there was considerable discussion at that time about Hose of Firestone manufacture being offered by the Robert Simpson Company at prices which were only slightly over preferred account prices. We were assured at that time by Mr. Tenison of Firestone that they were selling this account strictly at preferred account prices, and that the reason for the account quoting such low prices was that they found it necessary to liquidate their inventory because of the wet Spring season last year, seriously reducing their sales. We were also assured that there would be no repetition of this program.

. . .

(Mr. Millar then pointed out that hose of Firestone manufacture was again being advertised by the Robert Simpson Company at prices which convinced him that they were getting a concession from Firestone.)

We think this matter is so important that perhaps you will wish to get the comments of other companies and perhaps we should get together and thrash this thing out once and for all, as certainly other manufacturers cannot be expected to abide by a program and have their accounts sell at reasonable prices when Hose of Firestone manufacture is being marketed as outlined.

. . ."

(Exhibit 1345)

As a result of this letter, G. L. McCrea called a meeting of the Group. The minutes of the meeting held on May 30, 1941 disclose that the following decision was arrived at. J. A. Livingston, a Firestone official, was to advise the Group when certain commitments on garden hose which had been discussed were completed. Apparently this involved the Robert Simpson Company and was an effort to clean up whatever price concessions were being granted by giving other companies the assurance that, once Firestone's slate had been cleaned, they would not be faced with further concessions.

On June 17, 1941 R. M. B. Millar (Goodrich) again wrote to G. L. McCrea (Goodyear), sending copies to Messrs. Nicholls (Goodyear), Pritchard (Dunlop), Buchanan (Dunlop), Carroll (Dominion), Scott (Gutta Percha), Tenison (Firestone), Livingston (Firestone), Griffith (Griffith) and Barringham (Barringham):

"Attached is a copy of an ad. from the Toronto Daily Star, Monday, June 16. The heading reads - 'Clearance of 900 Odd Lengths of Garden Hose'. You will notice that the odd lengths vary from 5 feet up to 40 feet.

In the November 1940 Garden Hose program we find the following:

'Short ends and seconds of Garden Hose to be sold only to junk dealers with the exception of washing machine manufacturers. Also any other manufacturer purchasing Garden Hose in short lengths to be used as part of the article he is producing. No lengths longer than 15 feet to be sold.'

We don't know who manufactured the Hose advertised or whether Hose of All Rubber construction is included, but the fact remains that as best we can judge some manufacturer has apparently ignored the ruling which is supposed to be in effect.

The foregoing on top of the problem we are having with Eatons and Simpsons regarding Firestone, so far as we can see, simply adds fuel to the fire. Also, to date we have no information from Firestone as to what has actually been accomplished with respect to cleaning up the prevailing condition with both the Simpson Company and T. Eaton Company.

So far as we can see the Garden Hose agreement is like the League of Nations - everybody sits around a table and agrees to do certain things and then goes out and makes their own rules. We might also add that the Canadian Tire Corporation is also merchandising All-Rubber Garden Hose at prices slightly over the preferred account price.

With all of the aforementioned infractions we cannot hope to have a stable policy, and frankly, for our part we do not propose to sit back and have other companies continually break the program without taking steps to protect our interests."

(Exhibit 1344D)

Mr. McCrea received similar complaints on June 20 from H. S. Pritchard and W. J. Scott who stated the hose was of Dominion manufacture. G. L. McCrea replied to R. M. B. Millar on June 20, sending the usual copies:

"Referring to your letter of June 17, you were the second one who has drawn my attention to this ad.

There really have been very few infractions, considering the hundreds of opportunities there are with eight companies selling garden hose over a widely distributed area and to a very large number of accounts.

I think we should suspend judgment on this advertisement, mentioned in your letter, until we find out more particulars.

With one exception, now a couple of years ago, I believe the rule of selling short lengths has been very well confined to junk dealers and that the rule you quote in your letter has really been well observed.

You make a comparison with the League of Nations. The League, properly operated, would have prevented the present calamity; and if our arrangement developed along the same lines as the League of Nations, the present calamity would look rather small compared to what could happen among friends."

(Exhibit 1344E)

After some further correspondence and a meeting of the Companies, it was decided that none of the Group had been responsible for selling the hose in question. On July 2 R. M. B. Millar (Goodrich) again complained of low prices being advertised by two retailers in Toronto. As indicated in the following two letters, there again appeared to be little substance in Mr. Millar's allegations of price cutting, except insofar as the responsible manufacturers had not controlled the price at which their accounts resold to a degree satisfactory to Mr. Millar. On July 4 W. J. Scott (Gutta Percha) replied in a letter to G. L. McCrea (Goodyear), the usual copies being sent:

"I have received copy of Mr. Millar's letter to you of the 2nd instant and while we are not supplying All Rubber Garden Hose to Canadian Tire Corp., we cannot see that they can be accused of price-cutting as the figure mentioned is higher than a number of other advertised prices that we have encountered.

We have been selling Russill Hardware Company, and while I must admit that the prices they offer are quite low, we have been told that these prices are necessary in order to be competitive with a number of other outlets offering this type of hose.

I am afraid it would be rather difficult for any of the Rubber Companies to control the dealers in the matter of retail prices. It would be fine if it could be done but to us it looks impossible."

(Exhibit 1343B)

H. S. Buchanan (Dunlop) wrote on July 5 to G. L. McCrea, copies being sent to the others interested:

"With reference to Mr. Millar's letter of July 2nd in regard to an advertisement of the Canadian Tire Corporation covering all Rubber Garden Hose, in view of the fact that we sold this Company quite a substantial quantity of Garden Hose this year, it is reasonable to assume that it is our Product which is offered in the advertisement referred to.

. . . We quietly checked their retail prices both over the counter and through their catalogue, . . . These sale prices

represent better than a 10% mark up over Dealer's prices and therefore were quite a decent mark up over G. H. preferred prices. . . .

In regard to the question of retail prices on Garden Hose by the larger Dealers in Toronto it is well to bear in mind that once or twice during the season each of these Dealers in all probability will put on a sale featuring Garden Hose at a price which will represent 10 to 12% above Dealers prices. However these sales are the exception and at other times throughout the season the prices are such that the Dealer is in a position to compete and able to make a profit."

(Exhibit 1343C)

In August 1941 G. L. McCrea (Goodyear) sent out a letter calling a meeting of the Group for September 8. Messrs. Pritchard (Dunlop) and Larsen (Gutta Percha) replied, urging an earlier meeting because some larger buyers were endeavouring to place orders for their 1942 requirements at existing prices. As a result, Mr. McCrea circulated a letter calling an "emergency meeting" of the Group for August 25. The minutes of that meeting indicated that prices were raised by agreement and that new selling conditions were affirmed. New work sheets were sent out incorporating the changes. The evidence does not disclose that further complaints were lodged in 1941 which gave rise to further correspondence of the nature dealt with above.

The arrangements of the Group covering the merchandising of garden hose continued to be operative throughout the war period, insofar as the manufacture was carried on and insofar as they did not conflict with the regulations laid down by control authorities. Toward the end of 1946, H. S. Pritchard suggested that the manufacturers of cotton content hose should review the arrangements on garden hose with a view to submitting a more effective merchandising program, relating to the preferred list, to the all-rubber hose group. Following this suggestion a meeting was held on February 6, 1947 attended by Messrs. Larsen (Gutta Percha), Coon (Gutta Percha), Bergeron (Dominion), Dunn (Dominion), Pritchard (Dunlop), Buchanan (Dunlop), Davis (Goodyear) and McCrea (Goodyear). The minutes of the meeting were as follows:

" . . .

The purpose of the meeting was to discuss Garden Hose prices and merchandising problems previous to the meeting, which was held the following day with the manufacturers of all rubber Garden Hose.

It was decided that we would continue under the present merchandising plan and suggest to the all rubber Garden Hose manufacturers that they raise their price as high as possible and that the differential on the new raised price between all rubber Garden Hose and Fabric Garden Hose be not more than $\frac{1}{2}\%$ per foot. Also to insist that the special $2\frac{1}{2}\%$ (sic) which has been allowed the Barringham Rubber Company and the Federal Rubber Company (Griffiths) be eliminated.

. . ."

(Exhibit 1265)

Owing to the fact that Barringham and Griffith were smaller, less well-known rubber companies, they had been permitted for some years to sell all-rubber garden hose at a price of $2\frac{1}{2}\%$ per cent less than the other manufacturers to certain accounts. This was an established differential however, as was the differential between the prices charged for all-rubber hose and cotton fabric hose. Therefore, while garden hose prices charged by each manufacturer were not uniform, the price structure was agreed to and all changes in it were made according to an agreed pattern.

On behalf of Griffith it was argued in the course of the hearings that the evidence disclosed that Griffith had sold garden hose at a price below the going price for many years with the implication that this indicated price competition in the industry. It would appear from the foregoing however, that this differential was a term of the agreement rather than an assertion of individual policy.

The minutes of the meeting of February 7, 1947 attended by Messrs. Larsen (Gutta Percha), Coon (Gutta Percha), Bergeron (Dominion), Dunn (Dominion), Pritchard (Dunlop), Buchanan (Dunlop), Jacobs (Goodrich), Hawkins (Goodrich), Bellinger (General Sales Manager of Barringham), Griffith (Griffith), Langford (General Sales Manager of Viceroy), McCrea (Goodyear) and Davis (Goodyear), set out the decisions arrived at:

" . . .

1. Mr. Langford suggested that when we are preparing our 1948 policy we provide for a 5% for early shipment to take care of Companies not having branches from which they are able to serve their trade. This suggestion was looked on very favourably, and in view of this suggested policy, it was satisfactory to all concerned to eliminate, for this year, the $2\frac{1}{2}\%$ which was quoted to a special list of Companies by two Companies who exclusively manufacture all Rubber Hose.

. . .

2. It was decided to continue our present merchandising plan.
3. It was the consensus of opinion of the all Rubber Manufacturers that their base price should be raised 15%.

It was finally agreed that the differential between all rubber and fabric reinforced hose, as in the recent past, be left at 70¢ per hundred feet, or, in other words, reinforced Garden Hose was priced at 70¢ per hundred feet higher than all Rubber Hose.

4. The following prices were adopted, to be made effective on all shipments made on and after Monday, February 10th, which would be invoiced at the new established prices:

<u>EASTERN PRICE:</u>	<u>Dealer</u>	<u>P.G.H.L.</u>
$\frac{1}{2}$ " All Rubber	\$6.35	\$5.55
<u>WESTERN PRICE:</u>		
$\frac{1}{2}$ " All Rubber	6.85	6.05

5. The following names were added to the Garden Hose Preferred List: . . ."

(Exhibit 1267)

That this new arrangement resulted in higher prices being charged by Barringham and Griffith, than would have been the case in the absence of agreement is indicated in the following letters. On February 10, 1947 G. R. Bellinger (Barringham) wrote to G. L. McCrea (Goodyear) and sent copies to Messrs. Bergeron (Dominion), Pritchard (Dunlop), Buchanan (Dunlop), Coon (Gutta Percha), J. W. Fortner (Merchandising Manager of the Hose and Auto Supply Division of Firestone), Langford (Viceroy), Griffith (Griffith), Millar (Goodrich) and Davis (Goodyear):

"This is to confirm Mr. Norman G. Griffith's telephone conversation on February 7th afternoon, with respect to the changes made at the Group Hose Meeting whereby the $2\frac{1}{2}$ per cent leeway is to be off as well as the discontinuing of the special Jobber list which he and Barringham Rubber and Plastics Limited have agreed with.

As Mr. Griffith mentioned 'We do not like' but will be willing to co-operate for a period of six months to investigate the reaction from our trade. Should we feel the pressure against this move affecting our volume we would like to call a special meeting of the all rubber hose Manufacturers in July or August to discuss our problems and then present them to you stating our opinions for future operations."

(Exhibit 1526B)

On February 11, 1947 Mr. Griffith, in a similar vein, wrote to Mr. McCrea sending the usual copies:

" . . .

The Barringham Company and our own agree to drop the $2\frac{1}{2}\%$ discount which was permitted to a selected list of jobbers. In the opinion of our company, and we believe the Barringham Co. agree, the situation is no different now than when the special set-up was inaugurated. It is therefore under protest that we agreed to try out this present plan for one season. It is understood that the matter will be opened up for discussion early in the Fall when plans are being made for next season, at which time the plan of reverting to a 5% booking discount will be discussed."

: (Exhibit 1526C)

It was argued on behalf of Griffith that the elimination of this differential had not come about as the result of agreement but as the result of threats of a price war and that Griffith had been forced to drop the differential in order to avoid jeopardizing its other business which was its primary concern. The evidence about threats of a price war is inconclusive. Furthermore, Griffith's main business by far was in custom moulded products sold on a tender basis, a business which is not so vulnerable to the effects of a price war except at high cost to the aggressor. Finally, the pressure exerted upon Griffith appears to have been for the purpose of persuading them to accept a new term in an existing agreement rather than to enter an agreement for the first time.

There continued to be dissatisfaction in 1947 among the manufacturers of cotton content hose, with the preferred garden hose list. In correspondence they recorded displeasure at the large number of accounts which had been added to the list and given preferred prices, which consequently reduced the net return to the Group. In April 1947, H. S. Fritchard (Dunlop) suggested to representatives of all the Group that for the selling season in the following year, plans be made to establish a consumer price high enough to permit a 10 per cent discount to all accounts buying for resale, with additional discounts to a very restricted list of preferred accounts, with the object of making the lowest selling price as high or higher than the existing lowest selling price, but quoting it to a much smaller number of accounts. General agreement with this suggestion was expressed in separate letters by Messrs. Bergeron (Dominion) and Coon (Gutta Percha). As a result of the proposal, it was further suggested that an attempt be made to set up two distinct preferred lists, one covering all-rubber garden hose and the other, cotton content hose. To this end, Good-year, Gutta Percha, Dunlop and Dominion instructed their branches to consult and to provide the head offices with recommended lists of accounts in their respective territories broken down into categories which could be used for

the purpose sought. Special garden hose meetings of branch managers were held in August 1947 in at least Halifax, Saint John, Quebec, Montreal, Ottawa, Toronto, Winnipeg, Calgary and Vancouver, and the required lists submitted.

That the new merchandising plan was implemented at least in part is indicated by the fact that new work sheet pages covering garden hose conditions of sale were issued about December 9, 1947 and garden hose preferred accounts were divided into two categories, a "Garden Hose Preferred List" and an "All Rubber Garden Hose Preferred List".

Chapter 15 - Post-War Planning

Some considerable time before the end of the war the rubber industry began to consider plans for post-war cooperation. These plans were not regarded as very important in the mechanical rubber division for the reason apparently that the system of cooperation needed no particular overhauling. However, conversations and correspondence among the general managers of the Companies in 1943 resulted in the appointment of C. N. Larsen (Gutta Percha) to head the Post-War Planning Committee in the mechanical rubber goods field. The activities initiated by this Committee were to bring about a change of some consequence in the method of distribution of mechanical rubber goods. On September 18, 1944 G. W. Sawin (Goodrich) wrote to Mr. Larsen, in reply to a request for suggestions to be placed before the first meeting of the Mechanical Post-War Planning Committee:

". . .

I appreciate, as you do, that your division has not the problems that the tire and footwear divisions face, but I know you all agree that some consideration should be given by your division as to what can be developed that will be of benefit to the industry in the way of additional volumes and/or better profits.

". . ."

(Exhibit 1144)

A meeting of the Post-War Planning Committee was held on October 5, those present being Messrs. C. N. Larsen (Gutta Percha), C. D. Jacobs (Goodrich), S. R. Wilkins (Viceroy), H. S. Pritchard (Dunlop), G. A. Lamond (Dominion) and G. L. McCrea (Goodyear). The minutes of this meeting express the same idea as Mr. Sawin's letter:

". . .

. . . it was the general consensus of opinion that on the whole the industry's merchandising program had worked well, and that co-operation within the industry had been frank and satisfactory; to the benefit of consumers as well as the industry. It was recognized however, that the situation in the industry although good left scope for improvement, and it was felt that V day was the logical time to make such changes as seemed desirable.

". . ."

(Exhibit 1141)

In a letter to J. A. Porteus (Dominion) on October 11 C. N. Larsen gave a resume of the decisions of the meeting. He also wrote similar letters respecting other products to officials in other companies:

". . . At that meeting we decided that it was desirable to break down the industry into a number of groups and you were to get together those rubber manufacturers interested in rubber covered rolls.

The plan is to call these various interested manufacturers together in the near future and get their views on post-War planning as it affects (a) Distribution (b) Production.

Under the heading of 'Distribution' would be considered the question - do we favour greater or lesser co-operation within the industry than we had pre-War, and also such items as branch stocking points, prepay points, continuance of cash discount, listing of accounts, price structure, jobber representation.

'Production' would include questions such as - should wartime restrictions be voluntarily continued. If so, temporarily or permanently.

. . ."

(Exhibit 1143D)

In the minutes prepared by G. L. McCrea (Goodyear) of a regular mechanical goods meeting held on October 16, 1944 the following appears:

"1. The prime purpose of the meeting was to discuss Post-War Planning. As Mr. Larsen will be away about five weeks, we have decided not to have any meetings until he returns and also to wait for a while to see what kind of action other departments of the rubber industry are taking in regard to Post-War Planning. In the meantime, each of us will prepare a suggestion on Post-War Planning, especially in connection with distribution and the continuance of lists as they exist at the present time.

. . .

5. Each one is to write to the branches, discouraging the adding of any names to any of the lists as some of the branches have recently been acting rather freely in connection with the adding of names.

. . ."

(Exhibit 1140)

On January 10, 1945 C. N. Larsen wrote to Mr. McCrea and others interested:

" . . .

Admittedly it is difficult to draft a post-War programme for the industry. We do not know how far our wartime industrialization is going to carry forward into the post-War years. At the same time, common ground for discussion and agreement should be found in connection with such subjects as our present policy of discounts to jobber and national accounts. Our allowances to special agents and cash discount. If we are satisfied that our present practices are sound, well and good, but if we feel we can improve upon them, the logical time to make any changes is when the War is won, restrictions are removed and we are again free to chart our own course.

. . ."

(Exhibit 1138A)

Mr. McCrea's letter of January 11 replying to Mr. Larsen indicates that post-war planning in the mechanical field had begun to resolve itself in large part into the question of modifying the then existing system of trade lists and discounts.

" . . .

We have four classes that we always need to provide for: the small user; the large user; the account that buys for resale; and the distributor. If we were to sell the small user at List; the account buying for resale at 10% off List; the large user at 10/5%; and the distributor at 25%, these discounts could be a basis for discussion. If it were not for the present price restrictions, this plan could be adopted and these discounts might be used. . . . Of course, with price restrictions, the plan would have no chance of being made effective now; but it could be a basis for discussion when the ban is raised by the W.P.T.B.

The suggested plan would not work any great hardship on our present accounts but it would have the effect of abolishing the present J. list and would keep in effect the present National Account list; although that list is so large now that it should be reduced; and as soon as we removed any names on that list and considered them as small users, it would mean an advance of 10/5% and I know you all appreciate how confused the situation would be, even if we were permitted to follow the suggested plan at the present time, which we are not, of course, permitted to do. Then, corporate action along these lines would cause a great many accounts to feel that there was discrimination in our act, not by an individual company, but by all the companies as a group.

My suggestion, I know, is not very practical at the present time because it could not be made effective now and might not even be a satisfactory plan, if we were quite free to act.

All our accounts, and we as a group, have for so many years worked along the present plan that I fear it is going to be difficult to introduce new features, even if there is merit in them.

. . ."

(Exhibit 1138C)

Discussion continued through the summer and suggestions were sought from meetings of branch managers. On September 4, 1945 G. L. McCrea wrote to Mr. Bergeron (Dominion), sending copies of his letter to Messrs. Larsen (Gutta Percha), Scott (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Hawkins (Goodrich) and Davis (Goodyear):

"At our meeting held last Friday, Mr. Pritchard brought up the question of Post-War planning.

He suggested that as soon as we would be at liberty to do so, we should consider the lines of product that will need attention on account of the small margins of profit existing at the present time; and he further suggested that we list such items from time to time as they come to our attention, . . .

He also suggested the question of revision of 'J' list, 'N' list and other lists be considered in future.

.. ."

(Exhibit 1429M)

There is no record of further discussion about a revision of the trade lists following the early exchange of correspondence on post-war planning until August 19, 1946 when G. L. McCrea (Goodyear) wrote to G. V. Davis (Goodyear):

".. ."

I heard from Mr. Bergeron that Dunlop are going to suggest a considerable number of deletions from the Jobbers' List. I do not mean by that they are going to submit names for deletion, but they want to talk about the principle. While Pritchard says he does not want to raise prices at the present time, I realize, as you will, that the removing of a lot of names from the list will be just the same as raising the base price to a lot of customers.

.. ."

(Exhibit 1057)

Mr. Pritchard of Dunlop did in fact bring forward his suggestion and in a letter of September 5, 1946 to Messrs. McCrea (Goodyear), Larsen (Gutta Percha), Bergeron (Dominion), Dunn (Dominion), Coon (Gutta Percha), Davis (Goodyear), Hawkins (Goodrich) and Buchanan (Dunlop), he wrote:

".. ."

I feel it is all important that whatever we plan to do should be known to all of us at an early date so that we can be moving up on whatever program we agree on at the same time as we obtain freedom of action from wartime Price and Trade Board controls and freedom to change our price structure. As a substantial portion of this freedom has already been obtained I made the suggestion for consideration that we seriously consider wiping out all 'J' Consumer Accounts and also consider at the same time withdrawing from National Accounts the 'J' discounts, leaving the National Accounts to enjoy 5% better than straight prices.

.. ."

(Exhibit 1188A)

From November 7 to 13 a mechanical meeting was held and the following appears in the minutes prepared by G. L. McCrea:

".. ."

After much discussion on merchandising plans, Branches were wired as follows:

'You are requested to consult other Mechanical Managers and submit to Head Office by airmail, not later than Saturday 16th,

a list of all exclusively consumer accounts not purchasing for resale but who are currently listed on the Mechanical "J" List.'

. . ."

(Exhibit 1177)

On November 14, 1946 H. S. Pritchard (Dunlop) wrote to Messrs. McCrea (Goodyear), Bergeron (Dominion), Dunn (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Davis (Goodyear) and Buchanan (Dunlop):

"Mr. McCrea's company have introduced a new approach to the merchandising of Industrial Rubber Products in Canada with the suggestion that they might wish to appoint a National Distributor.

Mr. Hawkins indicated that their company would like to sell through their Tire Accessory Division all of their jobbers Garden Hose at Garden Hose Preferred Prices without listing such names.

As a group we are considering a major change in our price structure to consumers.

From the above comments it is obvious that our whole merchandising structure is in a state of flux and because of this and until decisions are finalized on the above items we are now recommending that no additions of any kind be made to any special listings, either 'J' Jobbers, 'J' Consumers, or Garden Hose Preferred Listings.

We feel that this would apply to the Montreal Managers' recommendations of November 11th."

(Exhibit 1187B)

C. N. Larsen replied on November 15 in his letter to Mr. McCrea:

"Acknowledging Mr. Pritchard's letter to you of the 14th inst., we approve of his suggestion that no additional names be added to any of the special listings in the mechanical rubber goods field until we have settled the matter of proposed changes in our merchandising plan. As a settlement will likely be reached within the next week, it will be no hardship to hold things up until that time."

(Exhibit 1187A)

About the middle of November 1946 branch meetings were held in various centres throughout the country in accordance with instructions from the head offices and lists were prepared according to directions. On November 26 and 27 another mechanical goods meeting was held attended by Messrs. Larsen (Gutta Percha), Coon (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop), Bergeron (Dominion), Dunn (Dominion), Alexander (Dominion), Jacobs (Goodrich), Davis (Goodyear), McCrea (Goodyear) and Little (Goodyear). The following is an extract from the minutes of that meeting prepared by G. L. McCrea:

" . . .

A discussion was held in connection with the removal of names from 'J' List and merchandising plans. We carefully went over the list prepared by the different Branches and eliminated the names suggested by them, preparing a new 'J' and 'N' List. Printing of these new 'J' and 'N' Lists was taken over by Mr. Coon.

. . .

When the new 'N' and 'J' Lists are printed they will be sent to Branches and these lists will be effective on receipt but retroactive on all unfilled orders received after September 15th.

When the new lists are received at Branches they are to consult with each other and give us the following information:

1. Those purchasing exclusively for resale in the form purchased
 - (a) That carry stocks
 - That solicit sales of mechanical rubber lines as separate items
 - That have full-time salesmen on the road
 - (b) Small organizations who pick up incidental resale business.
2. Manufacturers or assemblers buying for use in their product but possibly selling replacement mechanical rubber items.
3. A list of firms not considered by Branch Managers as entitled to continued 'J' listing.

. . ."

(Exhibit 1270)

The changes in buying status brought about by these list revisions appear to have been explained to the customers affected as price increases made necessary by rising costs. This reduced the possibility of their feeling they had been discriminated against by removal from trade lists. In addition, prices were also increased to accounts which remained on some of the lists by the removal of part of the discount formerly accorded these categories of buyers. The net result of the change may be summarized as follows, the discounts being from dealer prices:

	<u>Old Basis</u>	<u>New Basis</u>
Consumer	Dealer Prices	Dealer Prices
J List Jobber buying for resale	10%	10%
J List Consumer	10%	Dealer Prices
N List National Account	10 & 5%	5%
Distributor	10, 5 & 7½%	10 & 7½%

About the middle of December 1946 meetings of branch managers in various cities again took place and the information requested by the head offices in pursuance of the minutes of the meeting on November 26 and 27 was forwarded.

The negotiations surrounding the adoption and implementation of the new merchandising plan were substantially concluded at a meeting held on January 7 and 8, 1947 attended by Messrs. Larsen (Gutta Percha), Coon (Gutta Percha), Bergeron (Dominion), Dunn (Dominion), Pritchard (Dunlop), Buchanan (Dunlop), Davis (Goodyear), Little (Goodyear) and McCrea (Goodyear). The minutes read as follows:

" . . .

The purpose of the meeting was to discuss the 'J' List in a move to segregate legitimate jobbers on the list from others that have been receiving the 'J' prices. The lists were revised and broken into two classifications, 'J' and 'B'. The 'J' Lists will receive the usual 10% and the 'B' Lists will be entitled to only 5% on lines where 'J' Discounts apply. The lists will be issued on February 1st and will be effective on receipt at Branches and retroactive on all unfilled orders received after September 15th.

. . ."

(Exhibit 1268)

Some of the considerations leading to the changes in lists and discounts above described are referred to in a letter written on June 19, 1947 by H. S. Pritchard to Messrs. McCrea, Bergeron, Dunn, Nicholls, Davis, Larsen, Coon and Buchanan:

" . . .

We would like to point out that at one time, our thinking was in favour of trying to work towards the establishment of a single consumer price in the Canadian market. However, at the time we reviewed the consumer 'N' and 'J' Lists, we felt, and rightly so, that it would be unfair to increase our price to the then listed National Accounts more than we were prepared to increase our price to the then listed 'J' Accounts and we decided to withdraw 10% discounts from each class. . . .

I believe we are all convinced that any concession made to consumer accounts merely results in making it more difficult, in territories where all companies have special agents, for these special agents to satisfactorily cover such accounts and maintain their earning power. In fact, on several occasions, it has been suggested that the protection offered to special agents is not large enough at the present time and we did improve this protection fractionally when we overhauled the 'N' and 'J' Lists.

It is our suggestion, therefore, that we tread most cautiously towards adding any additional names to the 'N' List. Rather do we feel that it would be preferable for all companies, in the long run, to have a single consumer price, such as currently exists in the case of conveyor belting or Multiple 'V' Belts.

. . ."

(Exhibit 1197)

Other changes were agreed upon and introduced by the industry as it was progressively granted more freedom of action with the lapse of various wartime controls. These changes relating to prices, extension of range of products, freight charges, etc, though made by agreement were more in the nature of meeting particular situations than in the nature of a general revision, and did not fall so clearly within the industry's idea of post-war planning. In representations made before the Commission, it was strongly urged that such agreement as appeared to have occurred during the control period in relation to action to be taken when controls were removed, was necessary to reduce the possibility of disruption, owing to shortages, of the flow of supplies in the transitional period. However, the post-war planning in the industry described above was clearly directed to a more long term view than this and the most important aspect of post-war planning in the mechanical division bears little relation to the undoubted shortage of raw materials. That such planning was not of a merely transitional nature is obvious both from the nature of the measures undertaken and from the terms in which the surrounding discussions were couched. Moreover, in appraising the control and post-control arrangements, some regard must be had to the historical pattern of the industry. Where measures both bear no obvious relationship to controls and also conform to a previous pattern of agreement, the difficulty of assigning to them a control explanation is apparent.

Chapter 16 - Confidential Nature of the Arrangements

Efforts were made to maintain the confidential nature of the arrangements jointly undertaken. Branch managers guarded against revealing the nature of such arrangements to customers or other unauthorized persons. Occasionally at branch meetings a salesman substituted for a branch manager unable to attend, but from the following letter it is apparent that employees of the branches such as salesmen were not always to be taken fully into the confidence of the branch managers. In the covering letter to the minutes of a Montreal branch meeting held on July 7, 1941 at which the only business recorded was the recommendation of one account for preferred garden hose listing and the approval of the minutes of a Quebec branch meeting, A. E. Doig (Gutta Percha) wrote as follows to W. J. Scott (Gutta Percha) on July 7, 1941:

" . . .

You will also notice that the Goodyear Company was represented by a salesman, not their Manager - and I feel that there are certain matters that might be discussed at these meetings that should not be brought up before any of the salesmen. Insofar as today's meeting is concerned, it was quite unsatisfactory.

. . ."

(Exhibit 1308A)

Probably for most of the period the motive behind the efforts to keep the discussions and arrangements as confidential as possible sprang from the fear of reaction on the part of customers. This is indicated in the minutes of a branch meeting held in Montreal on September 11, 1945 which read in part as follows:

"Some discussion took place with regard to St. Lawrence Flour Mills Ltd. and recent quotations on belting to the Contractors, Stephens-Adamson Mfg. Co. Ltd. One Company recently quoted Stephens-Adamson Co. Ltd. on Grain Elevator Belting which was incorrect, not only as to the quoting on Grain Elevator Belting, but as to the offering of a Sales Commission to S. A. Company. The Rubber Company involved (Goodyear) stated the original quotation had been withdrawn and they had requested on Industrial Conveyor Belting and received the order. The Company (Dominion) reporting the irregularity has been severely criticized by Stephens-Adamson Company who became aware that a meeting had been held discussing the matter by the Rubber Companies' Representatives, thereby forcing the withdrawal of the quotation on Grain Elevator Belting. The Rubber Company incorrectly quoting Grain Elevator Belting assured the meeting that they had not told that any such meeting had been held. It is most necessary that confidential discussions between the representatives be so safeguarded that no leakages of such discussions are made the occasion of inferences whereby a Company reporting any irregularity is subjected to criticism for such action by any customer."

(Exhibit 1299B)

Similar conclusions may be drawn from the following extract from a letter previously referred to, which was written on September 6, 1945 by G. L. McCrea to a Goodyear official in Akron, Ohio:

" . . .

I notice in your letter that while you make fire hose for municipal corporations for exclusive sale through the American LaFrance Corporation of Elmira, N.Y., later in your letter, you also include sales to industrials. This, I believe, would be very difficult for us to arrange and if we made a decision to market fire hose through the American LaFrance in Canada, exclusively, I rather think it would have to be restricted to municipalities or municipal corporations.

. . .

The reason the rubber companies have never rubber lined any fabric for companies supplying fire fighting apparatus is that there is one company, some years back, that was very persistent in trying to get some of the rubber companies to line jackets for them and when refusal was made, they went out of their way to very openly discuss with municipalities, by conversation and letters, our present co-operative industry merchandizing prices and plans. For that reason, we thought the only safe rule was not to rubber line jackets for any fire fighting apparatus company. . . .

. . . "

(Exhibit 1056)

In late 1947 however, the efforts toward secrecy assumed a new significance or at least a change in emphasis, when the possibility of an enquiry under the Combines Investigation Act arose. The concern over customer reaction was no longer paramount. On July 9, 1947 the Commissioner of the Combines Investigation Act wrote for some preliminary information from the Canadian manufacturers of vulcanized rubber clothing. The manufacturers of mechanical rubber goods evidently became concerned about the possibility of the investigation being extended into that field. As a result of this concern, O. H. Barrett of Goodyear drafted the confidential memorandum previously referred to, addressed to Messrs. A. G. Partridge and R. C. Berkinshaw, President and Vice-President of Goodyear, respectively. This memorandum was prepared by Mr. Barrett about September 1, 1947 and was signed by him as Assistant to the President. In view of the manner in which statements of fact, opinions and discussion of policy are interwoven in this memorandum, it appears desirable, if not absolutely necessary, to set it out in its entirety. (1)

(1) The admissibility of this document in evidence before the Commission was contested in an action in the Supreme Court of Ontario on the ground that the author was a solicitor and the document privileged. The Court ruled that because the author was not acting purely in a legal capacity but in a combination of Assistant to the President and General Counsel the document was not privileged and, in effect, its production in evidence could be required by the Commissioner.

"Re: Mechanical Goods Sales Dept.

CONFIDENTIAL

It has been suggested that the subject Department purge its files in whole or in part of certain material relating to the activities of a group of Canadian mechanical rubber goods manufacturers. Messrs. Nicholls, McCrea, Kennedy and myself have discussed this question in the light of Section 498 of the Criminal Code and of the Combines Investigation Act. A summary of this discussion and the various factors which are considered important are recorded below so that you may consider the policy and consequent course of action which should be pursued in this connection.

A - NOTE OF RECORDS AND MATERIAL IN OUR POSSESSION

Companies regularly represented in group meetings are: Goodyear, Dominion, Gutta Percha and Dunlop, with the addition of Goodrich where fire hose is involved and the further addition of Goodrich, Barringham, Firestone, Griffiths and Viceroy where all-rubber garden hose is concerned. Meetings of some or all of the above group have been held from time to time for the past thirty years or so and minutes of these meetings have been distributed to those concerned. In addition to the minutes, 'work sheets' identical in form are kept by each of the first five companies above-mentioned on which are recorded the prices, discounts, conditions of sale, lists of customers to whom special discounts are allowed and special notes. This material relates to the complete list of mechanical goods manufactured by the various companies.

The work sheets reflect the changes made in the above particulars from time to time as recorded in the minutes and correspondence between the various companies. The correspondence consists of letters which are passed between the various companies between the dates of the meetings and at times the minutes of those meetings summarize the changes in particulars noted in the correspondence.

It is usual for our representative to keep a loose-leaf copy of the work sheets which is amended and brought up to date from time to time by the insertion of new pages. Some of the old pages have been kept on file back to 1937. A file of the minutes back to 1941 is on hand and copies of all pertinent correspondence for the last three years.

In addition to meetings of head office representatives, it has been customary for the branch managers of the first four named companies to hold territorial meetings from time to time and copies of the minutes of these meetings have been forwarded to the various head office representatives. Therefore, it is assumed that all the branches have copies of these minutes on file. Our head office file covers the period 1946 and 1947 to-date.

We do not know the extent to which any other companies in the group retain copies of the data and material above-noted but it may

fairly be assumed that they have a copy of the work sheets, at least, and probably copies of minutes and correspondence for some years back.

B - SUBSTANTIVE PARTS OF THE COMBINES INVESTIGATION ACT

'2. In this Act, unless the context otherwise requires,

- (1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of
 - (a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or
 - (b) preventing, limiting or lessening manufacture or production, or
 - (c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or
 - (d) enhancing the price, rental or cost of article, rental, storage or transportation, or
 - (e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or
 - (f) otherwise restraining or injuring trade or commerce, or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others.'

'32. Everyone is guilty of an indictable offence and liable to a penalty not exceeding ten thousand dollars or to two years imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars, who is a party or privy to or knowingly assists in the formation or operation of a combine within the meaning of this Act.

2. No prosecution for any offence under this section shall be commenced, otherwise than at the instance of the Attorney General of Canada, or of the attorney general of a province. 1923, c.9,s.26.'

C - SOME CONCLUSIONS AS TO CANADIAN ANTI-TRUST LEGISLATION

Position under Canadian Legislation.

(1) S.498 of the Criminal Code and the Combines Act cover the same field, the Combines Act being somewhat wider in scope. Under

both Acts the test of criminality is detriment to the public. The words 'unreasonably' and 'unduly', used in Sec. 498, must be construed in the light of this principle.

- (A) Monopolistic control is not ipso facto conclusive as to the existence of public detriment, though where it exists, the methods and objects of the combine will be subjected to close scrutiny.
- (B) Fixing prices, provided there is no undue enhancement, is not ipso facto criminal.
- (C) In every case there must be shown a likelihood of detriment to the public, and monopolistic control in itself is not sufficient. The detriment may be found:
 - (1) In the fixing of prices on an 'arbitrary' basis.
 - (2) In an unreasonable enhancement of the price, as a result of the combine.
 - (3) In the agreement to exclude a potential competitor from getting supplies.
 - (4) In the agreement to exclude new products from Canadian markets.
 - (5) In the use of methods tainted with fraud or misrepresentation.
- (D) In cases where such actual detriment to the public is shown, the combination may in some cases justify its actions by showing that they were necessary in order to prevent a demoralization of the trade which would indirectly be to the detriment of the public. In such a case the Court is faced with the task of 'balancing the detriment.'

(2) Assuming that public detriment can be shown, agreements, even though entered into by a single manufacturer or dealer for the purpose of restricting the resale of his products, are criminal.

(3) An out and out sale of an undertaking may not fall within the prohibition of s. 498; but the Combines Act would now apply to such a situation if the likelihood of actual public detriment could be proved. Similarly the leasing of an undertaking might be criminal, and perhaps in this case an indictment could be founded on s.498 as well as on the Combines Act.

(4). . . . (sic)
(5). . . . (sic)
(6). . . . (sic)

If these propositions are sound, they indicate a judicial tendency to distinguish between 'progressive' and 'unprogressive' combines. The former by virtue of improved methods crushes competition, or buys it out, and, in so doing, tends to create a monopoly. It is true that individuals are injured, but the public benefits through the introduction of improved techniques; and even when the monopoly stage is reached, the public is protected by the provisions against enhancing prices, and by the possibility of new competitors springing up.

The non-progressive combine, however, seeks to compromise with its competitors and come to a satisfactory agreement by which the profits of all the members are maintained, by a process of milking the public. Obviously for such an agreement to be effective, provision must be made for excluding potential competitors, for restricting foreign imports, for enhancing prices and in many cases, for methods tainted with fraud or misrepresentation. Parliament has signified its disapproval of this type of combine.

D - SOME CONCLUSIONS AS TO THE RUBBER COMPANIES' POSITION

There would be ample evidence which could be drawn from the material on file or, if no material were on file, from oral examination of various company representatives, that:

1. Prices for all lines of mechanical rubber goods (except molded goods and a few special items) have been and are fixed from time to time by actual or tacit agreement. As to whether there has been undue or unreasonable enhancement of prices resulting from this action is hard to determine because the Combines Investigation Act does not define the principles by which 'detriment to the public' is ascertained.
2. The group also keeps lists, which are changed from time to time, of the various customers to whom special prices are given, based on their respective trade classifications as decided by the group. This means that the special price classifications are made available only to those purchasers whose names appear on the respective lists.
3. The group comprises representatives of all manufacturers of mechanical rubber goods in Canada, with the exception of a small concern in British Columbia, The Huntington Rubber Co., which, it is understood, consumes about fifty tons of rubber a year in its manufacturing operations and offers, at present, no real competition to the group.
4. Because of the vagueness of the meaning 'detriment to the public' under the Combines Investigation Act and of the above facts, it would be safe only to assume that the Commissioner under that Act would be able to establish a prima facie case that there exists a combine of a type or kind prohibited by the Combines legislation. Without further evidence, it might also be possible for the Crown to sustain a prosecution under Section 498 of the Criminal Code.

In view of the above, the first inclination would be to dispose of all or the greater part of the written records and material. This action would mean that the Commissioner would have no documentary evidence available to his investigators and it is possible he might not pursue the matter further. In this connection, we are given to understand that the Civil Service Departments are very short of accountants and similarly qualified people at the present time and the job may appear too large for him to tackle. On the other hand, he may decide to examine the various company representatives orally on oath, which would elicit a substantial part, if not the whole, of the facts noted in paragraphs 1, 2 and 3, as well as the fact that although it was customary to keep written records, these had been destroyed in, say, September 1947. Judged by the publicity in the present Dental Supply investigation, I do not think the Commissioner would hesitate to publicize that evidence available to him had been destroyed. This would make an excellent story for one of Atkinson's henchmen. Further, and not the least important, is the fact that if all the written records were destroyed there would be no way of operating as in the past. Without the work sheets, at least, and some leeway in connection with correspondence and minutes, Nicholls feels that errors, mistakes and misunderstandings would be inevitable.

The destruction of the material might also raise the inference in the minds of not only the investigators but reasonable men that we had acted as guilty rather than innocent persons and this might adversely influence the decision of a court before which the various actions of the group were being judged.

Possibly the most important result of destroying the records would be to deprive us of the best available evidence necessary to any defence which we might decide to make. We would hope to use this evidence, in the first instance, to convince the Commissioner that the investigation should stop in his office on the ground that the prima facie case had been disproved. If this course did not succeed, it would also be available to both parties in any investigation which might follow. As instances of data which might prove helpful, we cite:

- (a) Qualities of many manufactured articles in the list become standardized because competing firms use them for comparison with the well-known standard brands manufactured by the various companies. Thus, the public can ascertain the merits of the relative competing brands and the possibility of the poorer quality merchandise being offered to them is reduced.

One of the obvious results which would follow from a destructive price war would be the lowering of quality with its resulting detriment to the public generally and industrial and agricultural customers in particular.

- (b) The records indicate instances of deviation in prices by members of the group but it is equally evident that no attempt has been made by the group to penalize any such member. What usually happens in such cases is that the other members of the group reduce their prices to meet the condition.

- (c) The records indicate no instance in which the group has attempted to penalize a customer because of trade practices to which they or any member of the group do not subscribe. Conversely, the trade classification assigned to each customer is determined by his actual trade qualifications. It is also known that certain customers, usually with large, powerful purchasing power, ignore the price structures provided by the group.
- (d) Government import reports show that large quantities of mechanical rubber goods are imported into Canada each month and we believe that the greater portion of such imports have not been bought by manufacturers. The records do not contain any evidence that action has been taken by the group in this connection.
- (e) The recorded data enabled the rubber industry to quickly adjust its manufacturing processes to war requirements which undoubtedly saved many months of delay and assured easy comparisons of quality by the technical groups appointed by the Government.
- (f) The work sheets might also indicate that the arrangement made the functioning of the Wartime Prices and Trade Board infinitely easier with respect to mechanical rubber goods. This was especially true with respect to the surcharges on belting and hose fixed by the W.P.T.B. by reason of the synthetic rubber and cotton subsidy problems.

In the broader field of the rubber manufacturing business it might be shown that the action of the various companies did not include the large Canadian rubber export trade in mechanical goods, tires and tubes, from which some companies prior to the war derived the greater portion of their profits. In addition, all companies must do business in such a way as to meet any foreign competition, in which respect no agreement exists. Thus, if Canadian rubber companies are to maintain their volume of business, Canadian prices must be competitive with any foreign laid down prices.

The problem, therefore, resolves itself into the question of whether, in the event of an investigation, we should adopt purely defensive, blocking and delaying tactics in which destruction of whole or part of the records might help, as above-noted, or should attempt to justify our actions over the past thirty years as beneficial to the public, in which case the preservation of some if not all the material presently on file might prove helpful.

However, so far as future practice is concerned, we think that records and correspondence should be kept to a necessary minimum and that copies of correspondence should, as a policy, be regularly disposed of. Mr. Nicholls feels that the keeping of work sheets is absolutely

necessary, if the present operating practice is to continue, but there appears to be no good reason why minutes should be kept on file. There is also the question of 'releases' which in the past have been made by us.

Should no investigation result in the near future, the material presently on file would be disposed of in the regular course and, therefore, its disposal should occasion no adverse inference should investigation be made at a later date.

Would you kindly consider the above and advise which of the two courses you feel we should adopt? I understand that the other rubber companies in the group are awaiting word of our action in the matter."

(Exhibit 1009)

It is not known to what extent if at all the suggestion regarding destruction of files was implemented by Goodyear. Toward the fall of 1947 however, a tendency to keep records and correspondence to a minimum and to use guarded language in the documents becomes apparent. Some instructions were evidently sent by the Companies concerned to the branch managers in connection with this matter. A letter from A. E. Doig (Manager, Eastern Division for Gutta Percha in Montreal) to C. N. Larsen suggests that this was done about the end of September when representatives of the Commission first visited the offices of one of the rubber companies. This letter dated October 6, 1947 reads in part:

"I have yours of the 1st regarding our monthly meetings. The regular one took place to-day but nothing was brought up - everyone seemed afraid to talk."

(The following handwritten postscript appeared on the letter):

"C.N.L.

Have destroyed your letter.

A.E.D."

(Exhibit 1137)

Precisely what these instructions to the branches were is not known, but they resulted in branch communications which, like correspondence originating after this time in the head offices, were written in very guarded language.

Mr. Barrett's memorandum indicated that work sheets and correspondence among the Companies would continue to be necessary if the existing operating practice were to continue. In the following months the correspondence passing among the Companies in the Group changed significantly in form. Some of the letters no longer bore the name of any addressee, nor were the initials of those to whom copies were sent always recorded, although correspondence continued to be circulated as before. Correspondence was couched not as in the past in plain language, but in the form of state-

ments of individual policy, although having regard to the history of joint action described in these pages, it would nevertheless appear that the purpose of such correspondence was to affirm industry understandings. Typical of this new approach is the following letter from H. S. Pritchard (Dunlop) to S. G. Nicholls (Goodyear) dated December 18, 1947:

"Dear Mr. Nicholls:

Re: Conveyor Belts

We have received an inquiry for conveyor belting which specifies friction pull, cover tensile and 28 ounce duck. It also specifies that the belts be made of Buna S rubber and the accompanying blue-print calls for the customer's name to be branded along the side of the belt.

We do not sell conveyor belting on the basis of friction pulls or cover tensile. Furthermore, we do not propose to tell our customers the rubber composition of the belts. Moreover, we prefer to brand the belts with our own company name and quality of belt and are not prepared to brand our customer's name on conveyor belting.

It has not been our practice for a number of years to make conveyor belting in 28 ounce duck and we see no reason for introducing it at this time.

Yours very truly,

H.S.P."

(Exhibit 1047)

A similar procedure was that used by J. T. Dunn (Dominion) in a letter to S. G. Nicholls (Goodyear) on October 10, 1947 which reads:

"We are listing below the price policy of United States Rubber Company (Dominion's parent organization) for splicing endless conveyor belts in the field.

For rental of Portable Vulcanizer when actually in use on the job - Charge \$10.00 per day. This does not include the time Vulcanizer is in transit to or from the job.

For the services of an Expert Mechanic to step back Belts and make splice, charge at the following rates:

\$2.00 per hour, or \$16.00 for an 8-hour day
\$3.00 per hour, for overtime and Saturdays
\$4.00 per hour, for Sundays and Holidays

Travel time to be charged on the regular hourly basis but no travel time charged for travelling at night or after regular working hours.

In case of labour difficulties preventing our Mechanic from doing the work, he will act as supervisor only.

Customer to pay travelling, living and all other necessary expenses of the mechanic.

Customer to pay freight both ways on Vulcanizer, tools and other equipment, including chain blocks and belt clamps.

Customer to pay for cement, gum, and other materials required in making the splice.

Customer to provide at his expense necessary labour to assist mechanic in handling belt, Vulcanizer, etc., also to supply any necessary scaffolding, platforms, etc.

Customer to pay for additional length of belt provided for stepping back the ends of each length to be made endless as follows:

Belts up to 30" wide - Charge 4 ft.

Belts 30" and up to 48" - Charge 6 ft.

Belts 48" and up to 60" - Charge 8 ft.' "

(Exhibit 1046)

With the exception of the first paragraph, this letter is word for word and paragraph for paragraph identical with the charges set out on work sheet page 13, dated June 1, 1948 covering the conditions of sale on conveyor belting. It is therefore reasonable to assume that page 13 was derived from this letter and that the purpose thereof was more than to convey information relating to the price policy of United States Rubber Company. Other understandings were arrived at by letters which appeared to set out individual company policy, sometimes prefaced by the phrase "as a matter of information". On December 27, 1948 for example, S. G. Nicholls (Goodyear) wrote as follows to Messrs. Bergeron (Dominion), Coon (Gutta Percha), Pritchard (Dunlop), Hawkins (Goodrich), Davis (Goodyear) and Little (Goodyear):

" - Conveyor Belting, including Step Ply and Elevator -

As a matter of information, we are going to make the following effective on December 29th:

'Narrow width surcharges (pages 15 and 16) will not apply on smooth top Conveyor Belting of 3 or more plies of cut edge, painted finish construction, when ordered in full roll lengths

(approximately 500 ft.), totalling 30 or more inches in width and cut into individual widths of not less than 4".'"

(Exhibit 1561G)

These changes were incorporated in the work sheets of all Companies on page 15 and referred to on page 16, both pages being dated December 30, 1948.

Prior to September 1947 the calling of a meeting of the Companies or the Group usually involved considerable correspondence arranging the most suitable date, suggesting the subjects for discussion, confirming that representatives would be present, etc. For example, the meeting of August 25, 26 and 27, 1947 was preceded by an exchange of correspondence numbering at least ten letters in which the meeting was referred to in this fashion at some length. The next meeting occurred on February 12, 1948 and the preliminary correspondence was greatly reduced. The evidence indicates that on January 16, 1948 S. G. Nicholls (Goodyear) sent the following letter at least to Dominion:

"I am confirming the date of February 12th."

(Exhibit 1014K)

He followed this up with a letter on February 6, 1948 sent to Messrs. Bergeron (Dominion), Larsen (Gutta Percha), Coon (Gutta Percha), Fritchard (Dunlop) and Hawkins (Goodrich) which read:

"February 12th at 9.30 A.M., Mr. Larsen's office."

(Exhibit 1014L)

An agenda dated February 10, 1948 for this meeting probably prepared by Mr. Nicholls was found in the Goodyear files but no record was found of any minutes, in the usual form, covering the meeting. However, a memorandum prepared by Mr. Nicholls dated February 16, 1948 deals with a number of matters listed in the agenda and has the appearance of a new form adopted for recording minutes of meetings. Similarly, a memorandum addressed by S. G. Nicholls to G. V. Davis on March 19, 1948 indicates that a meeting of the Companies was held sometime shortly before this date, and that the purpose of the memorandum was to record the proceedings.

Guarded language and indirect statements continued to characterize most of the inter-company correspondence down to April 4, 1949, the date of the latest documentary evidence received. In addition, new work sheets and amendments to the existing pages continued to be circulated by Goodyear, in most cases with the suggestion that it was only being done as a matter of information.

Chapter 17 - Imports

The supply of mechanical rubber goods to the Canadian market through the medium of imports has been very uneven in past years. During and since the war, imports of all types of mechanical rubber goods have increased very considerably, in line with the similar large increase in domestic production. The oral evidence indicates that most of the importing from the United States has been done by industrial consumers. Some quantities have also been brought in by the rubber manufacturers but these have been mostly products of a class or kind not made in this country. The effect of competition from imports on different products would of course vary, since these would not be brought in in the same proportion as they are manufactured here. For example, little all-rubber garden hose has been imported during this period, while very substantial quantities of mats and packing have been imported. The countries which are the chief sources of imports into Canada of mechanical rubber products are the United States and the United Kingdom. Occasional imports have also been made from other countries including Japan, Belgium and Czechoslovakia.

A comparison of the import figures for belting and hose with the figures for Canadian production published by the Dominion Bureau of Statistics makes clear the overall dependence of the Canadian market on domestic production. During the period from 1938 to 1948, imports of hose ranged from 5.1 to 8.2 per cent of domestic production and imports of belting ranged from 4.3 to 10.6 per cent of domestic production. Because of the difficulties of breaking down the miscellaneous group of products into meaningful categories, detailed import figures on these products are not available. However, the total value of all imported goods in the eight categories listed by the Dominion Bureau of Statistics, which include any mechanical rubber goods whatever, amounted to less than one third of the total production of mechanical rubber goods by the Group in 1948. Since more than half of this total import figure is made up of the value of goods imported under the heading "manufactures of india-rubber and gutta-percha, n.o.p.", which would include goods not within the categories of mechanical rubber goods dealt with in this Report, the limiting ratio of one third obviously overstates the importance of mechanical rubber goods imports. Other evidence such as reports on the competitive effect of imports by the branch offices of the Companies and the fact that non-mechanical rubber goods included in some of the tariff categories, particularly the general, are known to have been substantial, suggests that this over-statement is of considerable magnitude.

There are a number of reasons why imports of mechanical rubber goods have not constituted a satisfactory alternative supply to domestic production. Of major importance in this regard is the fact that there is a substantial tariff against the importation of mechanical rubber goods. The most important tariff items affecting mechanical rubber goods as

recorded in the work sheets dated May 21, 1948 are set out in the following table. By far the greatest proportion of mechanical rubber goods is covered by the tariff items marked with an asterisk. The remaining tariff items cover primarily those mechanical rubber goods which are specifically designed to be used as equipment on machinery of the various kinds mentioned.

Table II

<u>Tariff Items Relating to Mechanical Rubber Goods</u>				
<u>Tariff Item</u>		<u>British Preferential</u>	<u>U. S. A. & Most-Favoured Nations</u>	<u>General</u>
409	Cream separators and complete parts therefor	Free	Free	Free
409a	Milking machines and attachments therefor; complete parts	Free	Free	Free
409d	Harvesters in combination with threshing machine separators, including the motive power incorporated therein and complete parts	Free	Free	Free
409e(I)	Spraying and dusting machines and attachments therefor; and complete parts of all the foregoing	Free	Free	Free
409e(II)	Fruit and vegetable grading, washing and wiping machines; complete parts	Free	Free	Free
409j	Threshing machines, separators, including windstackers; complete parts (except endless drive belts)	Free	Free	Free
410a(I)	Loading machines, shaker trough, or belt trough, chain or elevating conveyors, air engines; flame-proof enclosed driving motors; of a class or kind not made in Canada, and parts of all motive power or machinery mentioned in this item, for use exclusively in mining operations	Free	Free	35%
410b	Machinery and apparatus for use exclusively in washing or drycleaning coal at coal mines or coke plants; machinery and apparatus for use exclusively in producing coke or gas	Free	10%	12½%

<u>Tariff</u> <u>Item</u>	U. S. A. & Most- Favoured		
	<u>British</u> <u>Preferential</u>	<u>Nations</u>	<u>General</u>
410d	Well drilling machinery and apparatus and complete parts thereof, for use exclusively in drilling for water, natural gas or oil, or in prospecting for minerals, not to include motive power; machinery and apparatus of a class or kind not made in Canada for maintenance and testing purposes in connection with gas or oil wells; well-packers and complete parts thereof for oil or gas wells; seamless iron or steel tubing of a class or kind not made in Canada, for use in casing water, natural gas or oil wells		
	Free	Free	Free
410g	Machinery and apparatus for sintering or nodulizing iron ore, concentrated or not, or slue dust		
	Free	5%	5%
412	Machinery, being presses, for use in the printing of newspapers, and of not less value than \$1,500.00 each, of a class or kind not made in Canada		
	Free	Free	Free
414	Typewriters		
	Free	20%	25%
414a	Complete parts of typewriters		
	Free	15%	25%
415	Electric vacuum cleaners and attachments therefor; and complete parts including suction hose		
	5%	20%	25%
415b	Washing machines and complete parts		
	15%	22½%	35%
442	Articles which enter into the cost of manufacture, of the goods enumerated in Tariff Items 409a (Milking Machines); 409d (Combination Threshers); 409e (Spraying & Fruit Grading Machines); 409j (Threshing Machines)		
	Free	Free	Free

Tariff Item		U. S. A. & Most- Favoured		
		<u>British</u> <u>Preferential</u>	<u>Nations</u>	<u>General</u>
442b	Materials which enter into the construction and form part of Cream Separators, when imported by manufacturers of Cream Separators	Free	Free	Free
524	Seamless cotton duck, in circular form, of a class or kind not made in Canada, for use in the manufacture of hose pipe (not $1\frac{1}{4}$ ", $1\frac{1}{2}$ ", 2", $2\frac{1}{2}$ " single unlined jacket)	Free	10%	10%
542b	Linen fire hose, lined or unlined	15%	30%	35%
610*	Belting n.o.p.	$7\frac{1}{2}\%$	20%	$27\frac{1}{2}\%$
618*	Rubber cement and all manufactures of rubber and gutta percha n.o.p.	15%	20%	$27\frac{1}{2}\%$
618b(1)	Tires of rubber for vehicles of all kinds fitted or not	$22\frac{1}{2}\%$	25%	35%
619*(1)	Rubber or gutta percha hose, and cotton hose lined with rubber; rubber mats or matting and rubber packing	20%	$22\frac{1}{2}\%$	35%
663b	Articles which enter into the cost of manufacture of fertilizers, when imported for use exclusively in the manufacture of fertilizers	Free	Free	Free

(1) Under the Torquay Trade Agreement effective June 6, 1951 these items were changed as follows:

	Most- Favoured		
	<u>British</u> <u>Preferential</u>	<u>Nations</u>	<u>General</u>
618b	20%	$22\frac{1}{2}\%$	35%
619	$17\frac{1}{2}\%$	20%	35%

A second important reason for the limited effectiveness of imports as a source of supply arises from the existence of certain artificial restrictions in the way of imports from the United States. These restrictions are the result of a policy adopted by the large American producers of mechanical rubber goods with manufacturing subsidiaries in Canada. This policy is outlined in a letter written on May 1, 1947 by S. G. Nicholls (Goodyear) to L. M. Bradley of the Goodyear Tire & Rubber Export Company, Akron, Ohio as a result of the American company's failure to follow the policy in one instance. The letter reads:

"The information given in your letter of April 25th is disturbing to us, from an Industry viewpoint, as we shall have to explain this shipment to other interested parties, if it comes up, and we expect it will come up.

We have had an understanding, for many years, that no Mechanical Rubber Goods products would be shipped into Canada, that can be made in Canada, by any of the Companies who make Mechanical Rubber Goods. Fire Hose is made in Canada by four Companies besides ourselves.

We shall explain this shipment of 1500 ft., 2½" Double Jacket Fire Hose to the other interested parties, if it comes up, but we must have assurance that our policy and arrangements with the Industry in Canada are understood by the Export Department and the Domestic Mechanical Sales Department in Akron.

We feel sure that this is, as you say, an unusual circumstance and an exceptional case and we trust it will not be repeated with any other Mechanical Goods, but we should like confirmation that we shall have the fullest co-operation from Akron or otherwise our selling arrangements over here will be very greatly disturbed.

On our behalf, will you kindly discuss this with Mr. Sanborn so that he will understand and be guided by our Industry Policy."

(Exhibit 1011)

Since the parent companies of three of the five largest Canadian manufacturers of mechanical rubber goods, namely Dominion, Goodyear and Goodrich, are among the largest manufacturers of these products in the United States, the possibilities of Canadian distributors or consumers obtaining supplies in the United States are obviously considerably lessened by the understanding referred to in this letter. Buying in the United States is thereby restricted to the American manufacturers which have no subsidiaries in Canada, or to American distributors who could not offer as favourable prices as the manufacturer and who might be confined by the manufacturer to selling in particular areas.

Although the volume of imported goods has been limited to a greater or lesser degree by such factors as the above, the import situation has been a matter of continuing concern to the Companies for a great

many years. It has influenced the courses of action taken by them in a number of different ways. Agreed price revisions have been made to take advantage of changes in the import situation, and agreed price reductions have been made to meet the threat of increased importations of various types of mechanical rubber goods. The purpose of the applicable tariffs is the protection of Canadian industry. If the companies which enjoy that protection compete among themselves then the cost of that protection to the consumer is kept to the necessary minimum. But if the companies fix their prices by arrangement, the tendency is to fix them at the highest level which the tariff will protect, and thus the cost to the consumer tends to be a price just under the laid down cost of imports, plus tariff, whether or not the companies, acting independently, could and would have sold at a lesser price.

An indication of the attitude taken by the Companies on one occasion when the import situation had changed is contained in a letter written on November 14, 1940 by J. M. S. Carroll, then Manager of Mechanical Sales for Dominion, to G. B. Rutherford, then General Sales Manager of the Mechanical Goods Division of Dominion.

"Answering the enquiry in your letter dated 13th instant I mentioned to the other interested Head Office parties at our last Toronto Mechanical Meeting that we all should consider the possibility of adopting a moderate price increase on Filling Station Gasoline Hose and Couplings. . . .

Existing U.S. prices on Filling Station Gasoline Hose when Canadian Duty, Sales Tax and Exchange items have been added would permit us to safely increase our present prices, providing of course that Head Offices of Dunlop and other interested Toronto Companies are agreeable.

. . .

The laid-in Canadian Cost of Endless and Roll Belting manufactured in United States would also permit us to safely announce a moderate price increase applying to Season 1941.

. . .

Providing the other Toronto Companies are agreeable it would also be possible to arrange for a moderate price increase (on industrial conveyor and elevator belting) to be made effective for shipments to be made during First Quarter of 1941. . . .

U. S. prices effective for shipments to be made during First Quarter of 1941 will not be announced until possibly 15th proximo. If they put over a general price increase we would then be able, no doubt, to safely arrange for some increases in present agreed Canadian quotations on Belting, Hose and Packings particularly.

. . ."

(Exhibit 1513)

Price increases on some of the products mentioned by Mr. Carroll were adopted at a meeting of the Companies on December 17, 1940.

Price changes which resulted from the changing importance of imports occasionally involved the Companies in incongruities in their price schedules. Because the inter-relationship of American prices could not be identical with the inter-relationship of Canadian prices, price adjustments made on particular products to meet the threat of imports sometimes threw the prices of these products out of line with the prices of similar goods in the range. This accounts in part for the concern shown by the Companies in the import situation. An example of the conflicts in which the Companies became involved is given in a letter from C. N. Larsen (Gutta Percha) to E. H. Coon (Gutta Percha), written November 18, 1946:

"We have run into a snag in connection with our new prices on TROJAN Mill Hose vs. GUTTA PERCH Underwriter Hose. You will remember we raised the prices of the Underwriter Hose last week and then restored them to the old basis because of an import situation. . . .

What has thrown us out of balance is the couplings. You will note that we are only charging \$5.50 per set for supplying and attaching couplings to the GUTTA PERCH Hose and the new price of the couplings for the TROJAN Mill Hose is \$8.05 per set.

. . .

Mr. McCrea phoned me about this this morning when it had been drawn to his attention by the Goodrich Company. Harry Pritchard also phoned me and his suggestion was that we reduce the uncoupled price of TROJAN in the 2" size from 62¢ to 60¢ and in the 2- $\frac{1}{2}$ " from 76¢ back to the old price of 71.05¢. To these prices we would add the new prices on couplings so as not to disturb the brass goods.

. . . I called Mr. McCrea to suggest that he check the U.S. prices again to see if we could safely raise the price of Underwriter couplings to \$8.05 per set, attached. Before, however, proposing this to him, he told me that he had heard again from Goodrich and they had agreed to accept the prices as set up for the present, even although it means driving the Mill Fire Hose over to the Underwriter class. However, I am not satisfied with this state of affairs and it will probably be discussed either by letter or at our next inter-Company meeting. . . ."

(Exhibit 1181)

Occasionally customers have been able to secure a privileged buying position from Canadian manufacturers as a result of importing or threatening to import supplies from abroad. This privileged position sometimes embraced a group or class of buyers, and other times merely individual companies. Thresher manufacturers for example in purchasing certain types of roll or cut belting for resale were granted only regular jobbers prices, but when buying belting to be used as original equipment on threshing machines they were given a credit rebate of 20 per cent after certifying that the belts purchased were actually incorporated in their products to offset the tariff regulation which permitted agricultural implement manufacturers to import roll or cut belting from the United States on the basis of a 5 per cent duty. An example of the favoured position enjoyed at least temporarily by some customers is given in a letter of June 19, 1947 from S. G. Nicholls (Goodyear) to G. L. McCrea (Goodyear), copies being sent to Messrs. Dunn (Dominion), Coon (Gutta Percha), Larsen (Gutta Percha), Pritchard (Dunlop), Buchanan (Dunlop) and Davis (Goodyear), as follows:

" . . .

In regard to Clause 17. We are agreeable to the deletion of this clause, which would mean that the Yukon Consolidated Gold Mines Corporation would buy on the regular basis, without any special discount. I understand that the special arrangement was set up to take care of American competition, but there is no longer a problem in connection with this competition.

. . ."

(Exhibit 1228)

Differentiating between customers in this way permitted concessions to be made to one account which would discourage further imports without generally lowering the price of the product.

There is no doubt that imports of mechanical rubber goods into Canada, limited though they were in many respects, and the threat of a greater volume have forced the Companies to modify their pricing policies to some extent from time to time over a lengthy period. It is equally evident however that the Companies have frequently taken advantage of the tariff in fixing the level of their agreed prices. They have sought to reduce the volume of imports by securing the consent of American parent companies to the refusal of possible sales in Canada of mechanical goods manufactured by any of the Companies. They have, on occasion, reduced the competitive effect of imports by selective concessions to individual customers or groups of customers, thus avoiding a general reduction in the price of the product affected.

Chapter 18 - Exports

In the export of most types of mechanical rubber goods, the industry ruling was that pricing was not subject to agreement. This fact, together with the necessity of meeting the competition of other countries, and freedom from sales tax, resulted in export prices which were customarily considerably below domestic prices for the same product. The rule was modified however in respect of goods bought for export but delivered in Canada. In such cases, the ruling was that only domestic prices were to be quoted based on the customer's domestic price classification. This ruling appears a number of times in the correspondence and is also recorded in the work sheets. The need for an agreement covering such export orders, if the general agreement on the prices of mechanical rubber goods was to be maintained, is obvious. Price concessions on such export purchases would naturally influence the placing of orders for purely domestic business, even if the industry prices on the latter were maintained.

A further refinement of the arrangement affecting exports was also necessary. Because of tariff provisions affecting the duty payable on goods brought into the country for incorporation into products of domestic manufacture for export, the Companies had to quote better than domestic prices to Canadian equipment manufacturers on such export orders to retain the business in Canada. Circumstances varied, but on export orders of this kind, subject to proof of export being supplied, customers were quoted prices either at a fixed percentage or at a fixed level below their domestic price classification.

Prior to Newfoundland's becoming the tenth province, when the Newfoundland market was to come within the protection of the Canadian tariff structure, the Companies took steps to ensure that the better prices, which the new situation would make possible, would be obtained in Newfoundland. On December 17, 1948 following a letter from S. G. Nicholls (Goodyear), the Companies added a new work sheet page which stated that their export departments would no longer handle the sale of mechanical rubber goods in Newfoundland after March 31, 1949; that any unfilled orders on hand on this date would be billed at domestic prices; and that any mechanical rubber goods to be delivered after March 31 would be quoted only at domestic prices.

Interest in exports has varied substantially among the Companies. The following table derived from material submitted by the Companies to the Commission, shows approximately the percentage of total sales of mechanical rubber goods accounted for by exports for each of the Companies in 1946, 1947 and 1948.

Table III

Exports of Mechanical Rubber Goods as Percentage of Total Sales

	<u>1946</u>	<u>1947</u>	<u>1948</u>
	<u>%</u>	<u>%</u>	<u>%</u>
Dominion	18	17	15
Goodyear	17	15	11
Gutta Percha	12	18	9
Dunlop	1	2	3
Goodrich	0	0	0

The fact that the control of the largest Canadian manufacturers of mechanical rubber goods, except Gutta Percha, is held abroad has affected the export policies of the Canadian industry. The following evidence, given by G. Bergeron, General Sales Manager of the Mechanical Division of Dominion from early 1945 to January 1, 1949, at pages 4656, 4657, and 4664 of the transcript bears on this point.

"A. We were governed by a ruling in our company that I guess the other companies did not have.

Q. What was that?

A. We were not allowed to sell for export.

Q. Your company?

A. No. This is for export.

BY MR. SMITH:

Q. Perhaps you ought to explain that?

A. The U.S. Rubber Export Company is the export division of United States Rubber Company and they handle export sales for the Dominion . . .

. . .

BY THE DEPUTY COMMISSIONER:

Q. When you say the export business was handled by the U.S. Rubber, you mean the prices were handled there or the goods were shipped from there?

A. Any inquiries we received marked 'For Export' we had to forward to the U.S. Rubber Export Company, New York.

. . .

Q. You told us a little earlier this afternoon about the arrangement between the Dominion Rubber and its parent company, the United States Rubber, whereby the Dominion Rubber on mechanical goods did not quote on export shipments; that is correct?

A. Yes.

Q. That was in effect during your period as General Sales Manager?

A. Yes.

Q. That applied on all mechanical items?

A. I would not like to say that applied all the way through one hundred per cent. I do believe several of our boys in the branches occasionally tried to slip an order in and hang on to it for themselves. When we were caught, we were in trouble. I do not want to tell you that we never filled an order from a domestic branch to export. I know it has happened.

Q. But your understanding was that you were not supposed to?

A. Yes.

Q. Did that include Newfoundland?

A. No, Newfoundland, both companies went there. We went there and U. S. Rubber Export went there up until these last few weeks.

Q. Was there any other territory such as Newfoundland outside Canada?

A. No, sir, I do not think so. I think that was the only exception."

It will thus be seen that while Dominion filled export orders under the direction of the U.S. Rubber Export Company, it did not have control of the direction in which exports would be made.

Goodyear was in a similar position, as indicated by the testimony given by R. C. Berkinshaw before the Commission at pp. 8093 to 8095 of the transcript:

"Q. Turning to another subject, exports during the post-war period, has Goodyear since the war exported to any dollar areas?

A. I am sure we have, yes. Our exports at the present time though are pretty thin as compared with what they were in 1947 and 1948, but I think about 50 or 60 percent of our exports were paid for in dollars.

Q. To what areas did they go?

- A. Well, I cannot give you that exactly. They were going to different countries, some to South America and some to India.
- Q. To what degree, if at all, are the exports of your company controlled by the parent company in the United States?
- A. Well, I will tell you, the way it works is this. We do not have any distribution organization in the foreign field. We sell to only one customer, which is the Goodyear Tire and Rubber Export Company, and we deliver on the orders of that company, and that is the way it has worked for a long time.
- Q. You are not soliciting?
- A. We do not go out and solicit.
- Q. It is a question of what sales may be assigned to you?
- A. What orders may be given to us. We receive an order, for, say, so many thousand tires for delivery to Calcutta or something of that nature, and we would deliver them and we bill the export company.
- Q. And who determines the prices of those?
- A. Prices?
- Q. Yes, at which you sell to the export company?
- A. In the foreign field?
- Q. At which you sell them to the export company?
- A. We sell them at cost plus the percentage of the profits.
- Q. Is there a set rule there?
- A. We sell to them at a formula which takes in our factory cost and our shipping and warehouse expenses, export department overhead, that is the clerical section, you know; and we share in the profits of the export company to the extent of 10 percent of the cost as so calculated.
- Q. Now, financially, how are you paid on your exchange?
- A. It depends on how much of it is sold in dollars or how much is sold in sterling or in Canadian dollars.
- Q. Depends on the particular terms of sale in the particular order?

- A. The terms of sale come through to us, but we are anxious to get American dollars and we would like to sell them all for them if we could but we have got to sell them on the terms which will enable us to get the business. That is something over which we really haven't got very much control, you understand. We only have one customer. It has been a very profitable thing for us in the past because it has helped us on our unit cost tremendously with the volume of business that has been placed our way.
- Q. And I understand that generally before the war that was very important, and that since the war export decreased?
- A. Yes, it used to amount to somewhere about 35 percent of our total production."

It would therefore appear that because of their foreign connections, neither Dominion nor Goodyear, by their own efforts, promoted export sales of mechanical rubber products, and as can be seen from Table III, Dunlop exported only very limited quantities of mechanical rubber goods and Goodrich none whatever. This, of course, is not the whole story because the policies in this regard of the parent companies were part of the larger policies under which Canada benefitted by foreign investment in Canadian plant. Also, it cannot be known how the export sales Canadian companies might have obtained by their own efforts would have compared with what they obtained through the orders passed to them by their American parent companies. It is difficult therefore to say whether, on balance, the advantages or the disadvantages are the greater.

Chapter 19 - Oral Evidence

Nineteen witnesses from the companies named in the Introduction to this Part appeared before the Commission to give evidence respecting the arrangements relating to the manufacture, distribution and sale of mechanical rubber goods, which have been detailed in the preceding pages. In general, the testimony given by these witnesses confirmed only in part the arrangements which appeared to be described in or implemented by the many pieces of documentary evidence which established a consistent and repetitious pattern. On the whole the witnesses did not seek to controvert the acts or statements recorded in the documentary evidence. The witnesses adopted rather, two main approaches to the matters raised by the documentary evidence, although the oral evidence was conflicting in some respects. One approach was to place a different interpretation upon the character and extent of the cooperative measures undertaken by the Group than the language and context of the documents would ordinarily indicate; the other was to suggest that the effect of whatever arrangements did exist was minimal.

With regard to the first approach, a common observation made by the witnesses was to the effect that since the arrangements involved no penalties for their breach, or measures for their enforcement, they did not deserve to be called agreements. The witnesses expressed the view that there were few agreements among the Group on matters relating to mechanical rubber goods; the arrangements which did exist were in the nature of gentlemen's agreements not to take advantage of competitors, or were undertaken to provide information as a courtesy gesture. The following quotations are extracts from the testimony given by representatives of the four largest manufacturers of mechanical rubber goods and bear on this point.

The evidence of E. H. Coon (Gutta Percha) at pages 3868 and 3869 of the transcript reads as follows:

"WITNESS: If you will look at Item 4 there: As I recall that, somebody wanted to introduce 5" and 6" rough bore and smooth bore hose. Apparently they had an inquiry for it and they suggested that price and, as you see, it was put on the work sheet, page 44. If anyone wanted to quote on the same product they could use that price, but there was no penalty if they did not, no one would be fined.

BY MR. MARTIN:

Q. I am not asking you about penalties. I am just asking you whether or not there were any agreements with respect to prices?

A. Well, somebody would suggest that price and that would be a price that anyone could follow. There was no agreement as to whether they would or would not use that.

Q. But that price would be put in the work sheets?

A. Yes.

Q. In other words, that price would be put in the work sheets of each company?

A. That is right.

Q. Were those prices actually put into effect? You say there was no necessity to follow them, but were they actually acted upon by your company?

A. I will not say we sold any of that product: 5" and 6" hose.

Q. Did you make it?

A. We could make it if we wanted to.

BY THE DEPUTY COMMISSIONER:

Q. Did you follow the prices that were inserted in the work sheets, not with reference to this particular product but with reference to any product?

A. Our price lists are generally the same prices that are in the work sheets.

Q. Are there any exceptions where there are none?

A. There have been discrepancies, yes.

Q. Is there any class of product over the period of the last year or so in which there has been any discrepancy?

A. No, I would not say there has been."

Continuing at page 3876 Mr. Coon's evidence reads as follows:

"BY MR. MARTIN:

Q. Mr. Coon, I was asking you something about the question of prices and any agreements or understandings which may have been arrived at by the gentlemen who attended these meetings as representatives of the mechanical goods divisions of the rubber manufacturers. I just wanted to get it straight: Do I understand you correctly when you say there were understandings arrived at with respect to prices but they were not binding. Is that correct?

A. That is correct.

Q. In other words, supposing the four of you representing the four major companies sat down and agreed to sell a certain article at \$2.00, there was nothing to prevent any one of the four from going out and selling it at \$1.50?

A. No.

Q. That is correct?

A. That is right.

Q. And I take it, too, that there were from time to time understandings or agreements made at these meetings with respect to prices but there was nothing whereby they could be enforced, - these arrangements or understandings, - is that right?

A. That is right."

H. S. Pritchard's (Dunlop) evidence at pages 3977 to 3979 of the transcript reads in part as follows:

"Q. Now, Mr. Pritchard, I understand that at these meetings from time to time agreements were made between yourself and other representatives of industrial rubber goods manufacturers with respect to prices. Price agreements were made from time to time, is that correct?

A. I think that takes a little clarification. What do you mean 'agreement'?

Q. The prices of your products, the price of a particular product.

A. What do you mean by an agreement?

Q. I mean an agreement or understanding, written or oral.

A. You've got to agree to do something.

Q. I would say you agreed upon the price of a certain product or products from time to time.

THE DEPUTY COMMISSIONER: The price that each company would charge for a certain product.

BY MR. MARTIN:

Q. The price that each company would charge for a certain product?

A. Well, in the first place your wording of agreement, to me an agreement is something that you bind yourself to do and there is a penalty if you do not do it. In that sense we have had no agreement under my supervision.

Q. I understand.

A. But if all agree to do something I figure that if there is really a binding agreement there has to be some penalty involved in it. Now, in that sense I did not agree to do anything. We discussed prices.

Q. Was any understanding or arrangement or agreement arrived at with respect to prices of products?

BY THE DEPUTY COMMISSIONER:

Q. Put it this way: Was there any understanding between you and the other companies that you would charge the prices that were discussed and settled at your meeting even though there is no penalty attached if you did not in fact do so? Did you go away from the meetings with the understanding that you were planning to proceed in a particular way?

A. If I was satisfied that a price which was discussed was acceptable to our company certainly I would go away with an understanding I was quite prepared to use that price but I was not bound to use that price. If it was a good thing for our company and seemed to be a good thing for my customers and was workable from the standpoint of the Canadian market then I have used prices that might have been discussed at a group gathering but as far as any agreement goes in the normal sense of an agreement I do not feel that we agreed to do anything.

Certainly I have suggested prices based on studies I had made in our own cost department and somebody else has studied the thing from another company's standpoint and I suggested a price and somebody else may have said 'that looks like a fair price in relation to production' and then I come back and use that price, that is about what we were doing."

The following is an extract from further testimony given by Mr. Fritchard at pages 4000 to 4002 of the transcript:

"BY MR. MARTIN

Q. Prices shown in the catalogue are they taken from the work sheets or the 'bible'? I mean articles which are shown in both the work sheets and the catalogue, is the price in the catalogue taken from the work sheets? Do you understand?

A. I think I understand what you are getting at, but let us say it this way that sometimes the work sheets are made up from the catalogue, that is what happened because as I said before this master summary that you call the work sheets is a compilation of the various peoples' suggestions. Say that we

were the first people to initiate a certain line. It would be taken from our catalogue. The reverse to what you are saying. Now, it could happen the other way, depending on whether we decided to follow someone else's leadership in that regard or not.

BY THE DEPUTY COMMISSIONER

- Q. Put it this way: Do you know of any instances, you have mentioned cross-checking by some chap in your office, do you know of any instances where prices are listed in your price list at prices different from those shown in the work sheets? (pause)
- A. I think it might be confined to the odd case that we add something in the catalogue not in the work sheets.
- Q. I am speaking of products shown in both places.
- A. I think you will find on checking that they are in line because in the first place as far as we are concerned we only accept prices that suit us. If we make a suggestion of a price that is recorded in the work sheets of course it is in the catalogue, and if somebody else suggests a price that seems to us to be in line with our needs we adopt it partly out of choice and partly out of necessity. If we want to go lower of course we go lower and the other fellow has to come lower to meet us."

The evidence of G. L. McCrea (Goodyear) at pages 4296 to 4299 of the transcript reads:

"BY MR. MARTIN:

- Q. Then, let me draw your attention to page 4 of this same document, exhibit 1009.
- A. Yes.
- Q. I direct your attention particularly to the heading marked D, the first paragraph of which states --

Prices for all lines of mechanical rubber goods (except moulded goods and a few special items) have been and are fixed from time to time by actual or tacit agreement.

I want to ask you about that, from your own knowledge; what do you say about that statement made in that sentence?

A. I think if it said prices for some lines of mechanical rubber goods -- but when you get into this question of 'all' lines, I don't agree with the statement 'have been and are fixed from time to time by actual or tacit agreement,' because that indicates to me that some group, as a whole, have decided on what the price shall be; and that is not my recollection of it. Because, in the main, some individual companies usually decided what the price would be, and that was the basis of fixing the price. And others, other companies, if they liked it they could follow suit or if they did not want to follow suit, then they in turn would give their views. If the reason was logical, so far as I was concerned I would be prepared to change my position. But, in the final analysis, I decided for the Goodyear Tire and Rubber Company what our prices were going to be.

Q. During the time that you were manager of the mechanical rubber goods division, at any time did you enter into any agreement, verbal or otherwise, with any other representatives of mechanical goods manufacturers with respect to prices? Did you ever make any agreement, verbal or otherwise?

A. Not as I understand an agreement -- I would say I did not.

Q. You did not?

A. No.

Q. What do you mean -- 'not as I understand an agreement'; what do you mean, or how do you understand the word 'agreement'?

A. I understand the word 'agreement' as a much abused word.

Q. Abused?

A. Yes. An agreement, I would take it, is something which, if you did not perform the arrangement, there would be a penalty attached to it. And there were certainly never any penalties attached, so far as we or any other company was concerned. In fact, if our own or any other company wanted to quote at any time a lower price, I would not consider that a violation, because I do not understand there was any agreement which told them that they might not quote another price if they wished to.

Q. If you did quote a lower price, would any of the other representatives of the companies complain to you about your action?

A. I don't recall them ever complaining, so far as Goodyear is concerned, but if they did that still would not alter the situation. They would have the privilege of complaining if they wanted to; but that would not alter our position. And if we quoted a lower price either deliberately or in error, so far as

I am concerned I would say that the lower price would stand. I would never be in favour of the withdrawal of a price and the resubstitution of a price on a higher basis.

Q. You say there was not any agreement, because there were no penalties attached to any agreement?

A. Yes, that is my idea.

Q. Is that correct?

A. Yes.

MR. ROBINETTE: He says there is no agreement."

Continuing at pages 4307 and 4308 of the transcript, Mr. McCrea's evidence reads as follows:

"BY MR. MARTIN:

Q. Then, can you tell me this; if there was not any understanding between the representatives of the various mechanical goods manufacturers with respect to prices, and no one had to abide by the prices, what was the purpose of continuing to hold meetings? If each person could go his own way, what was the purpose of having meetings from time to time?

A. I would think they served a very good purpose because, in the main, the respective rubber companies perhaps did not exercise their prerogative. But it was within their prerogative to do so, if they wished to.

BY THE DEPUTY COMMISSIONER:

Q. Would you elaborate upon that? I did not quite understand you.

A. I say that while the rubber companies had a perfect right at any time to amend and to announce their prices, in many instances they would not take advantage of it, of that prerogative. But that did not mean that they could not, if they wanted to.

BY MR. MARTIN:

Q. You say that there was no agreement or understanding. Would you say there was an attempt at an agreement with respect to prices, or an understanding?

A. No; I think that I would like to explain it this way: as a result of discussions there was bound to be some system developed, and a system was developed -- you might call it the Goodyear Tire and Rubber Company system; but I looked upon it as a system or method of handling the merchandising in reference to prices,

or anything else -- the system grew out of these meetings. Because it was quite evident from this correspondence that if there was not any understanding or any agreement or any arrangement, there certainly was something. And I describe that 'something' as a system that developed out of a number of meetings held over a period of years. But each one, I reaffirm, could still decide for himself as to what prices he wanted to quote."

G. Bergeron (Dominion) testified as follows at pages 4605 to 4607 of the transcript:

"Q. Was there any understanding or arrangement or agreement made by the representatives of the various companies with respect to prices at any of those meetings you attended?

A. I do not know just how you call it. There was no agreement. There was nothing done there that we could not find out, go out and find out if we had not held the meetings. We never considered ourselves bound by any decision or agreement, whatever you want to call it, that was made there.

Q. Was there any attempt made at those meetings to have the prices of comparable products of these various manufacturers the same, by way of agreement or understanding?

A. Approximately, but when you say 'comparable', some of these products varied quite a bit.

Q. You mean some of the products that were made by the different companies?

A. By the different companies.

Q. How were the prices of your products determined?

A. So far as we were concerned?

Q. So far as the Dominion Rubber Company was concerned?

A. By the cost of the product and by competition, of course. After all, we were meeting competition and if competition did not permit you to get your prices in the right groove, you had no choice.

BY MR. O'DONNELL:

Q. If you wanted to continue to compete?

A. Yes.

BY MR. MARTIN:

Q. You said a moment ago that there was not anything binding so far as any question of prices were concerned, what do you mean by that?

A. Well, I considered myself perfectly free to go out and make whatever arrangements I wanted with the customers.

Q. We have had filed as exhibits books which have been described as work sheets?

A. Yes.

Q. They were filed as exhibits 1563-A and B yesterday?

BY THE DEPUTY COMMISSIONER:

Q. Those were produced by Mr. Rutherford?

A. Yes.

BY MR. MARTIN:

Q. As I understand it, this contains the various products in your mechanical division, together with the prices you charged for them; that is correct, is it?

A. Well, I do not say that we charged the prices in this book all the time.

Q. You say what?

A. I do not say we charged the particular prices that were in this book all the time.

Q. You mean you could change them?

A. I did not change them in this book, no.

BY THE DEPUTY COMMISSIONER:

Q. Would you have some other record of the prices?

A. No, sir.

BY MR. O'DONNELL:

Q. What you mean, Mr. Bergeron, is that while there are prices in the book you did not always follow those prices?

A. No, that is right.

BY THE DEPUTY COMMISSIONER:

Q. Generally or in particular instances?

A. Well, I would say generally covers a lot of ground; particular instances confines it pretty well."

In addition to suggesting that the documentary evidence was misleading in that it indicated the existence of agreements relating to the manufacture, distribution and sale of mechanical rubber goods among Canadian manufacturers, when in fact no agreements as such, existed, the witnesses testified that the effect on competition of any cooperative arrangements which were part of the industry's methods of operation was not of great consequence. A number of reasons were given for this.

One such reason is referred to in the evidence quoted above, given by G. Bergeron. A number of witnesses, including Mr. Bergeron, testified that in spite of the identical prices contained in the work sheets, every company did not in fact always charge such prices. There is little doubt that some sales were made below the established price schedules from time to time and other sales were made in a manner which did not accord with the understandings in the industry. However, although the oral evidence varied on this point, the documentary evidence clearly indicates that such sales were exceptional and complaints arose when low prices were found to have been quoted or other action taken which was not approved by the Group, so that whatever conclusions may be drawn from the existence of the arrangements need be qualified only to a limited extent, to take account of the cases in which the arrangements were not strictly adhered to.

Another reason given was that many kinds of mechanical rubber goods are highly engineered products, built to perform very particular tasks and frequently designed to operate in virtually unique installations, where matters of price and distribution are not of paramount importance. Undoubtedly this is a consideration which should not be lost sight of. However, the bulk of all mechanical rubber goods dealt with in this report are not designed for and sold to only one or two customers, but are standard products which are stocked by the Group or by their distributors. With regard to those products which are more or less unique, like certain types of conveyor belts and rubber-to-metal work, the Companies deemed the price to be charged and the conditions of sale to be sufficiently important considerations to warrant their being included in the general arrangements covering the standard mechanical rubber products and to warrant their being given considerable attention. Finally, some of the engineering features of certain of the products were in any case covered by industry understandings as described in Chapter 11.

A further reason advanced by witnesses, or by counsel, for not considering certain of the arrangements to be detrimental, was that these arrangements were said to be undertaken at the instance of the wartime control authorities, or in pursuance of wartime control policies and were necessary in the public interest to deal with the problems of short supply in the transitional period after the end of the war and the removal of formal

controls, and before the industry was able to resume its normal peacetime operations. It has however been shown that almost the same industry arrangements existed for a long time prior to the war, as existed at the time this investigation began. Further, in the chapter on "Post-War Planning" and elsewhere it has been shown that the industry itself was concerned with long-run arrangements and not alone with the situation in the transitional period. In addition, the documents relating to post-war planning which were contemporary with the events they described, are not based upon a need expressed by Government authorities for the contemplated arrangements, nor did they ascribe to any such arrangements a character of being in furtherance of the policies of the wartime control authorities. Finally, while a large part of all mechanical rubber goods products were decontrolled in July 1946, the arrangements undertaken by the Group were still in operation in 1949.

Some witnesses also testified that there was substantial competition in the Canadian market from imports, particularly from the United States. This has been dealt with at some length in the chapter on "Imports". From that discussion it must be concluded that if domestic competition were absent, competition from imports would not in itself be great enough to protect adequately the domestic consumers' interest in a free market.

A final point raised which concerned Barringham, Griffith, Viceroy and Firestone deserves mention. Witnesses from these companies stated in evidence that the percentage of their companies' total operations accounted for by the sale of products covered by the arrangements existing in the mechanical rubber goods division of the industry was very small. Of the accuracy of these statements there is no doubt. Despite this, however, the products in question were deemed by these companies to be important enough volume-wise to merit their participation in the cooperative arrangements undertaken by the industry over a period of many years. In addition, although sales by the companies named above of products covered by industry understandings may have been relatively small in comparison with the total sales of these companies, they were of considerably greater significance in relation to total sales in Canada of the products concerned.

PART III - RUBBER TIRES AND TUBES

Chapter 1 - The Tire and Tube Industry

A. Scope of the Report

This Part of the Report is concerned with trade arrangements relating to the manufacture, distribution and sale of the more important types of tires and tubes, namely, those used on passenger cars, buses, trucks and on certain industrial and farming equipment such as graders, tractors and agricultural implements of various kinds. They are ordinarily grouped in the trade under the three headings of passenger, bus and truck, and implement and tractor tires and tubes. In number, these tires and tubes in 1948 and 1949 represented approximately 85 per cent of the output of the Canadian tire industry and they represented approximately 95 per cent of the total value of all tires and tubes manufactured in Canada.

The time period covered by this Part is from 1937 to 1948 inclusive.

This Part of the Report should be read in conjunction with Part IV dealing with accessories and repair materials, the two Parts being complementary. Accessories and repair materials comprise such items as fan belts, radiator hose, tire and tube patches, cements and repair gums, which are ordinarily sold by the same companies and in the same markets as tires, so that any joint arrangement in respect of the sale of tires and tubes would tend to lead to joint arrangements in respect of accessory and repair material items.

The following table gives, for the years 1948 and 1949, the selling value of the production in Canada of the three types of tires and tubes with which this Report is concerned:

Table I

Selling Value of Passenger, Bus - Truck and Implement and Tractor
Tires and Tubes, 1948 and 1949⁽¹⁾

(A) Tires

<u>Year</u>	(1) <u>Passenger</u>	(2) <u>Bus-Truck</u>	(3) <u>Implement and Tractor</u>	<u>Total</u>	<u>Total of all types</u>
	\$	\$	\$	\$	\$
1948	38,166,117	45,672,155	11,097,463	94,935,735	96,073,789
1949	37,354,597	35,233,036	12,715,858	85,303,491	86,341,624

(B) Tubes

1948	5,880,629	2,826,099	1,744,872	10,451,600	11,062,076
1949	5,636,105	2,456,487	1,906,343	9,998,935	10,330,704

(1) Figures extracted from Report on The Rubber Industry, 1949 - Dominion Bureau of Statistics.

B. Growth of the Industry

Rubber casings (tires) and rubber inner tubes (tubes) form part of the standard equipment of a varied list of products, including passenger automobiles and motor buses, trucks, vans, trailers, tractors, road graders, bulldozers, airplanes, motorcycles, bicycles and miscellaneous other wheel-traction vehicles. Not only are tires and tubes required as part of the original equipment of these finished products, but they are also required as replacements when the tires and tubes originally installed on the above vehicles have suffered a certain amount of wear or deterioration. The expressions "original equipment" and "replacement" will recur frequently in this Part in connection with tires and tubes used for these two respective purposes.

The production of tires and tubes in Canada has increased over the past seventeen years in the manner indicated in the following table:

Table II

Number and Value of Tires and Tubes Produced in Canada, 1933 - 1949⁽¹⁾

Year	Number		Total Selling Value	Total Selling Value of all other Rubber Products
	Tires	Tubes		
			\$	\$
1933	1,898,416	1,721,913	17,991,057	23,520,499
1934	2,611,222	2,349,217	27,144,824	28,085,557
1935	2,465,167	2,284,110	27,341,939	28,607,631
1936	2,527,213	2,457,346	29,134,845	32,919,963
1937	2,916,020	2,758,393	36,166,784	38,096,969
1938	2,392,337	2,155,412	28,786,804	32,243,906
1939	3,038,895	2,752,197	31,498,051	38,447,420
1940	3,275,113	2,960,946	41,559,732	41,460,969
1941	3,831,118	3,595,010	64,030,626	55,107,150
1942	1,962,022	1,923,790	66,831,055	55,400,347
1943	1,987,789	1,683,123	64,720,133	65,437,647
1944	2,679,902	2,066,945	70,521,791	70,630,563
1945	3,489,573	3,138,406	85,239,780	73,116,146
1946	4,006,929	3,810,552	73,616,630	63,727,968
1947	6,191,537	5,270,212	112,849,556	83,458,178
1948	5,606,439	4,981,160	107,135,865	86,976,069
1949	5,033,011	4,388,412	96,672,328	81,831,231

(1) Dominion Bureau of Statistics - Report on The Rubber Industry, 1949.

As can be seen from the above figures the production of tires and tubes now represents the most important segment of the Canadian rubber industry. During the years 1945 to 1949 inclusive, the total selling value of the manufacture of tires and tubes in itself was greater than the combined value of all other rubber products manufactured in Canada.

The main reason for the notably larger production of tires and tubes in the past few years has been the demand created by the unprecedented production of passenger automobiles and industrial trucks during the years immediately following the end of the last war. Other factors such as the ever-increasing use of automotive buses and coaches for both urban and inter-city public transportation, as well as the larger amount of freight and express tonnage now being handled by huge automotive vans and trucks, have in the past years greatly augmented the demand for certain types of tires and tubes. Finally, another important development from the point of view of tire and tube consumption, has been the increase in the use of mechanized equipment, such as road-graders, bulldozers, tractors and other machinery, both in industry and on the farm. The mechanization of the farm, which has been going on at a rapid rate in the past years, has had a strong effect on the tire industry. The following table shows the production and sales figures for implement and tractor tires and tubes from 1939 to 1949 inclusive:

Table III

Number and Value of Implement and Tractor Tires and Tubes Produced in Canada, 1939 - 1949(1)

<u>Year</u>	<u>Tires</u>	<u>Selling Value</u>	<u>Tubes</u>	<u>Selling Value</u>	<u>Total Selling Value</u>
		\$		\$	\$
1939	22,760	355,208	21,655	55,896	411,104
1940	59,460	877,414	57,324	166,956	1,044,370
1941	84,161	1,823,305	77,857	290,517	2,113,822
1942	19,704	418,124	20,242	77,881	496,005
1943	16,534	364,625	11,722	54,087	418,712
1944	144,313	3,707,195	120,476	622,811	4,330,006
1945	138,248	3,430,501	147,632	712,926	4,143,427
1946	236,866	5,398,237	242,452	1,020,458	6,418,695
1947	489,676	8,350,895	456,682	1,145,577	9,496,472
1948	590,059	11,097,463	599,070	1,744,872	12,842,335
1949	606,915	12,715,858	593,486	1,906,343	14,622,201

- (1) Dominion Bureau of Statistics - Report on The Rubber Industry, 1949.

3. Description of the Products

Practically everyone is familiar with the appearance of tires used on passenger cars, buses, trucks and farm tractors. Whilst generally speaking, all tires are rubber moulded in a circular shape and reinforced with a certain number of layers of fabric, many differences relating to such things as tread design, rubber thickness and the strength of the fabric lining are incorporated into these tires to make them more suitable for their particular use.

Thus the tread design on passenger, bus and truck tires which are intended for higher speed runs on average or better than average roads and highways will tend to be smooth and even, although the pattern itself will vary with each tire company's brand of tire. On the other hand, passenger and bus-truck tires which are built for use on mud or snow covered roads, tractor tires and off-the-road types, which, as their designation implies, are used mostly in fields or on rough ground, will have a tread design which gives greater grip and traction to these tires.

Tread and rubber thickness as well as the number of layers of fabric, which are referred to as plies, will be greater in tires which are intended for use under rough conditions such as those used on road-grading and earth-moving machinery or which will bear heavier loads such as those built for use on large buses, truck, vans and trailers. Whilst the ply-rating of passenger tires will be mostly 4 and sometimes 6 with respect to heavy-duty (H.D.) passenger tires, the number of plies on other types of tires is usually greater, ranging, for instance, from about 6 to 20 plies in the truck and bus sizes, and from about 12 to 36 in the earth-mover sizes.

All three types of tires are manufactured in a variety of sizes. These sizes are generally taken from the cross-sections of the tires and their inner diameters. For example, a "6.00 - 16" passenger tire is a tire with a cross-section of 6 inches and an inner diameter of 16 inches. As tires increase in size the need for a larger ply-rating also increases, thus bus and truck tires in 8.25 and above sizes have a ply-rating of 10 or more and bus-truck tires in the 12.00 sizes are manufactured with at least 14 plies.

As each tire company uses its own distinctive brand names to identify each type of tire that it sells, the size and ply-rating of a tire is the only common denominator that can be used in referring to the product. As will be seen in later sections, all types of tires are not manufactured or sold by each and every tire company in Canada; nor is there uniformity between the Tire Companies in the number of sizes of tires manufactured or sold. Also, a number of the Tire Companies manufacture premium quality tires in certain types and sizes. In 1948 there were over 50 different sizes of passenger tires manufactured in Canada. More than twice that number of sizes were produced in the bus-truck and the tractor tire types.

Whilst some of the larger tire companies produce an extensive range of tires, others restrict themselves to the manufacture or sale of the more commonly used sizes. In this respect it should be pointed out that the great bulk of the production of each of the three main types of tires is concentrated in a few of the more popular or commonly used sizes which are produced or sold by most or all of the Tire Companies. For instance, out of a total of 1,588,268 passenger tires produced in the first six months of 1948, 662,694 tires were in the "6.00 - 16" size, which for years has been the standard passenger tire size in the tire industry and 201,923 were in the newly introduced "6.70 - 15" extra low-pressure size, making a total of 864,617. So that out of some fifty-odd passenger tire

sizes produced in that period, two individual sizes accounted for well over half of the total. During that same period ten bus and truck tire sizes and fourteen tractor tire sizes accounted for over 85 per cent of the total production for those types of tires.

Tube sizes in each of the passenger, bus-truck and tractor type tubes, indicate the particular sizes of the tires into which these tubes are to be inserted. As one tube is often used for two or more sizes of tires, tube sizes are not as varied as those of tires, and here again most of the production is concentrated in a few sizes.

The determination of what sizes of tires will be produced in each tire field is largely, if not entirely, removed from the independent initiative of the Tire Companies by the fact that tires must be built to fit the products of the passenger car, bus, truck, trailer, tractor and other equipment manufacturers. The latter in turn depend to a considerable extent on a body known as the "Tire and Rim Association", an American association composed of engineers, technicians and scientists from various quarters including vehicle and tire makers, for changes, improvements and standardization in the size and construction of their wheel rims.

D. The Tire Companies

At the time this investigation was instituted, all of the production and most of the sales in Canada of passenger car, bus, truck, industrial and farming equipment tires and tubes were accounted for by the Companies mentioned in this paragraph. Sales of privately or specially branded tires and tubes are discussed in the following section. The Companies are as follows:

Dominion Rubber Company, Limited - The head office and manufacturing plant of the Tire Division of the Company are both situated in Kitchener, Ontario. Dominion manufactures under its own brand names passenger, bus, truck, implement and tractor tires and tubes of various sizes and types which it sells both in the original equipment and in the replacement fields.

Dunlop Tire and Rubber Goods Company Limited - At its manufacturing plant in Toronto, Dunlop manufactures, under its own brand names, various types and sizes of passenger, bus and truck tires and some sizes of implement and tractor tires and tubes which it sells both in the original equipment and in the replacement fields.

Firestone Tire & Rubber Company of Canada Limited - The Company, whose head office and plant are in Hamilton, Ontario, manufactures and sells under its own brand names various types and sizes of passenger, bus, truck, implement and tractor tires and tubes. Firestone's production of tires and tubes is sold partly to original equipment manufacturers and partly in the replacement market.

The B. F. Goodrich Rubber Company of Canada Limited - Goodrich, at its plant in Kitchener, manufactures under its own brand names various types and sizes of passenger, bus, truck, implement and tractor tires and tubes which it sells both in the original equipment and replacement fields.

The Goodyear Tire & Rubber Company of Canada, Limited - at its tire plant in New Toronto, the Company manufactures, under its own brand names, a very extensive range of passenger, bus, truck, implement and tractor tires and tubes which it sells to original equipment manufacturers and to the public as replacements.

Gutta Percha & Rubber, Limited - The Company, during the period covered by the investigation, manufactured and sold various types and sizes of passenger, bus and truck tires and tubes which it sold mostly on the replacement market under its own brand names. (1)

Seiberling Rubber Company of Canada, Limited - At its plant in Toronto the Company manufactures under its own brand names various sizes and types of passenger, bus and truck tires which are sold for the most part in the replacement market.

The General Tire & Rubber Company of Canada Limited - Although the Company sells throughout Canada, almost exclusively in the replacement market, a fairly extensive range of tires and tubes, it relies upon others for the production of these products, having itself no manufacturing facilities. The Company's brands of passenger, bus and truck tires are manufactured to General's specifications by Dunlop under a cost-plus arrangement dating back to 1937. General owns the brand names and the moulds, Dunlop acting actually as a processor. General's agricultural tires are imported from its parent company in the United States.

In the year 1948 the percentages of total sales of tires and tubes of all these Companies accounted for by each of them were approximately as follows:

Dominion	-	18.5
Dunlop	-	6.0
Firestone	-	22.5
General	-	2.5
Goodrich	-	8.5
Goodyear	-	35.0
Gutta Percha	-	2.5
Seiberling	-	<u>4.5</u>
		100.0

(1) It should be noted that Gutta Percha ceased the manufacture and sale of tires and tubes in the summer of 1949.

The expression "Tire Companies" used extensively throughout this Part will refer generally to the above eight companies or the majority of them.

E. Special or Private Brands

In addition to the eight Tire Companies listed in the preceding section, some half dozen other Canadian firms merchandise, under special or private brand names, passenger and bus-truck tires and tubes particularly in the more popular sizes, as well as a number of implement and tractor tires and tubes. These firms include two of the large oil companies, one selling directly and the other through a subsidiary company, certain large departmental stores and other retail merchandising concerns who have no tire manufacturing facilities themselves but who market these tires and tubes along with their other commodities. These tires and tubes, which are referred to in the trade as "Special" or "Private Brands" are manufactured for these firms by some of the Tire Companies. In the last few years of the period of time covered by this investigation, Dominion and Dunlop accounted for practically all of the manufacture of Special or Private Brands in Canada, by far the greater amount being accounted for by Dominion.

Special or Private Brands are manufactured according to agreed upon specifications between the manufacturer and the merchandiser, the arrangements varying in almost every case. In some cases the brand names are owned by the merchandisers, whilst in other cases they are the property of the tire manufacturer who specially reserves the use of the names for the merchandisers. In some cases the moulds used in the manufacture of the tires belong to the manufacturer, in others to the merchandiser, and in some cases the tires and tubes are manufactured by the Tire Companies on a cost-plus basis, and in other cases prices are negotiated.

Special or Private Brands are sold almost exclusively on the replacement market. In the case of the oil companies, they are usually distributed through the medium of the companies' service stations, whilst departmental stores and other retail outlets sell their brands of tires and tubes directly to the public in their stores or via the mail order route. Tires and tubes sold by the latter concerns have usually been priced below the level of prices prevailing for the Tire Companies' standard brands of tires and tubes.

Although, as will be seen later, Special or Private Brands have

been one of the reasons for the introduction of lower priced secondary lines of tires and tubes by the Tire Companies, they have accounted for only a small proportion of the total sales value of tires and tubes manufactured by the Tire Companies. The dollar sales of Special or Private Brand tires and tubes reported by the Tire Companies was, in each of the years 1947 and 1948, approximately 7 per cent of their total dollar sales of all tires and tubes. Since, however, there were certain variations in the bases on which the dollar values of sales were reported, it is possible that the proper ratio of sales value of Special or Private Brands to the sales value of all tires and tubes is somewhat different than this percentage indicates. In this respect it should be noted that the merchandisers of Special or Private Brands are dependent upon the manufacturers of standard brands for their supply of tires and tubes. The fact that Special or Private Brands are not ordinarily sold on the original equipment market means that they do not benefit in the advertising or repeat sales in the replacement market brought about by original equipment sales. It is also important to note that the tires and tubes sold by some of these merchandisers do not carry the servicing facilities usually found among tire dealers.

F. Imports

As will be seen in later sections the laid-down cost of tires and tubes imported from the United States has had a strong effect on the domestic price levels of passenger, bus, truck, tractor and implement tires and tubes established by the Tire Companies. In addition to sales and excise taxes, passenger and bus-truck tires and tubes imported into Canada from the United States have been subject to a tariff duty of 25⁽¹⁾ per cent. Certain tires and tubes for use on farm equipment have, on the other hand, been allowed to enter Canada duty free. In spite of the Tire Companies' general policy of pricing their tires and tubes at a level which would discourage importations, a certain number of passenger, bus, truck, and farming equipment tires and tubes are imported each year into Canada mostly from the United States. Most of the Canadian tire manufacturers bring in from the United States from time to time types or sizes of tires and tubes which are not manufactured by them in Canada. Several Canadian dealers or distributors have also, on occasion, imported tires and tubes from the United States, especially when the supply situation in the neighbouring country was easier such as in 1946, or when the laid-down price in Canada of certain popular types of tires or tubes produced in the United States made it profitable to import them into this country, as was the case during the first eight or nine months of 1947. These imports, however, have amounted to only a small percentage of the total consumption in Canada. Listed below are import figures of tires and tubes for certain years:

(1) Under the Torquay Trade Agreement effective June 6, 1951, this became 22½ per cent.

Table IV

Imports of Tires and Tubes⁽¹⁾

<u>Year</u>	<u>Tires</u> ⁽²⁾		<u>Tubes</u> ⁽²⁾	
	<u>Units</u>	<u>Value(\$)</u>	<u>Units</u>	<u>Value(\$)</u>
1938	21,522	242,559	5,784	13,058
1940	131,645	5,774,975	120,836	880,098
1943	4,093	68,376	1,049	6,589
1945	1,648	91,406	1,748	6,706
1946	96,279	3,438,269	48,813	250,607
1947	122,647	1,784,494	39,514	90,921
1948	28,014	858,070	22,356	53,246

- (1) Dominion Bureau of Statistics - Reports on The Rubber Industry, 1938 - 1948.
 (2) Exclusive of bicycle tires and tubes and of solid rubber tires.

G. Exports

A certain percentage of the tire industry's production of tires and tubes is sold each year on the export market. In the pre-war years these sales accounted for a large portion of the industry's total production. In the post-war years this portion was still very significant but according to the evidence the establishment of tire plants in various countries which formerly imported from Canada, together with the dollar difficulties experienced by would-be importing countries, have combined to restrict the volume of exports in the years following the war below what it otherwise would have been. The following table shows the number and value of tires and tubes exported during certain years since 1937:

Table V

Exports of Tires and Tubes⁽¹⁾

<u>Year</u>	<u>Units</u>	<u>Tires</u>		<u>Tubes</u>		<u>Total Value(\$)</u>	<u>Total Selling Value of Tires and Tubes Manufactured in Canada (\$)</u>
		<u>Value(\$)</u>	<u>Units</u>	<u>Value(\$)</u>			
1937	862,928	8,722,371	589,240	755,328	9,477,699	36,166,784	
1939	708,423	7,374,194	479,316	649,141	8,023,335	31,498,051	
1940	424,747	4,981,302	307,170	479,373	5,460,675	41,559,732	
1943	104,914	3,327,651	99,701	316,858	3,644,509	64,720,133	
1945	306,994	11,568,378	287,955	1,108,238	12,676,616	85,239,780	
1946	276,775	5,221,906	301,988	744,744	5,966,650	73,616,630	
1947	602,793	10,460,738	604,425	1,503,666	11,964,404	112,849,556	
1948	679,278	16,221,416	451,302	1,244,640	17,466,056	107,135,865	

- (1) Dominion Bureau of Statistics - Reports on The Rubber Industry, 1937 - 1948.

The great majority of exports of tires and tubes have been handled by the larger tire companies - Goodyear, Dominion, Firestone and Goodrich - whose parent companies in the United States have found it preferable, in the case of exports to British countries, to have the products manufactured in Canada because of the lower rates of duty attaching to made-in-Canada tires and tubes. For the most part the Canadian subsidiaries have had little or no control over export matters beyond filling orders for tires and tubes secured by the international export divisions of the parent American companies through whose sales organizations abroad the orders had been obtained. The procedure followed in the case of one company was described as follows:

"Q. With reference to exports shipped from (Canadian plant), how would those be billed and by whom? Would they be billed by your company?

A. Yes, we billed on the schedules established by our international division. They notified us what their prices are and we billed and collected.

Q. Then, you said something to the effect that you sold to the international division at a particular price plus a margin?

A. Plus a margin for shipping and handling, billing, packing and shipping.

Q. So, there could be no book transaction until after the sale is completed, then you would credit the international division the difference?

A. We would bill them and we would turn around and credit them with the receipts from their account.

Q. Then, that credit entry would be transferred to them?

A. That is right, in the form of the profit."

(Evidence p. 5435)

Another witness, in describing the procedure followed by his company, stated that the tires were supplied on a basis of cost plus profit.

H. Distribution and Price Systems in the Tire Industry

There are wide differences between the distribution set-ups and pricing systems used by the tire industry in the original equipment and replacement markets.

Whereas original equipment tires and tubes in the great majority of cases are sold and shipped to vehicle manufacturers directly from tire companies' head offices and plants, replacement tires and tubes reach the public through a somewhat elaborate system, the main features of which have become standard throughout the industry. The backbone of each tire company's distributive set-up in the replacement field is the "franchise

dealer" who, under a franchise agreement with a tire company (see Chapter 4, Section D), sells that company's brands of tires and tubes to the consuming public. Tire Companies have, in numbers varying with the size of the company, hundreds and even thousands of these dealers located from coast to coast throughout Canada. To supplement these retail outlets, some tire companies sell their brands of tires and tubes through a limited number of wholly owned and operated retail stores or, by agreements with certain oil companies, through the medium of these oil companies' service stations. In certain cases sales are made direct to oil companies which distribute to their own stations.

Each tire company supplies and services its dealers and other retail outlets either through company owned branches or, where the company has no branches, through large independent merchandising concerns acting as "distributors". These distributors operate for the Tire Companies in lieu of branches, their remuneration, in the form of discounts or commissions, depending largely on the amount of sales promotion and other merchandising work they assume.

In addition, dealers are sometimes supplied, especially in remote or sparsely populated areas, through a number of warehouse owners (warehouse dealers) and large "key dealers" who stock tires and tubes either outright or on a consignment basis.

There is also a wide difference in the price structures of replacement and original equipment tires and tubes.

In the replacement field prices are set out in two price lists published by most manufacturers and called the "Consumer List" and the "Dealer Billing". The former, which is the basic price list in the replacement market, sets out the proposed retail prices of tires and tubes sold by dealers to the public and the latter, as the name implies, sets out the prices at which the dealer is billed for the tires and tubes purchased from the manufacturer. These "Dealer Billing" prices are arrived at by applying the dealer's discount figure to the prices on the "Consumer List". For example, when the "Consumer List" price for 600-16, 4 ply first line passenger tires was \$19.60 the "Dealer Billing" price, or the price at which the dealer was billed for that particular type and size of tire, was 22½ per cent below the "Consumer List" price or \$15.19. The "Dealer Billing" price does not represent the net price to the dealer who, in addition to his regular dealer's discount, enjoys a 2 per cent cash discount, a yearly rebate or bonus which varies according to the dollar volume of his purchases and a 3 per cent monthly "franchise allowance" which was instituted at the end of 1947. Net prices to tire and tube distributors and to certain large consumer accounts are arrived at by allowing discounts from "Dealer Billing" or "Consumer List" prices.

Net prices are nominally the rule however, in the original equipment market. Although a restricted number of original equipment manufacturers have purchased tires and tubes on a discount from "Dealer Billing" basis, the great majority of them have purchased their requirements of tires and tubes either at the prices set out in price lists headed

"Base Manufacturers Net Prices" and "Preferred Manufacturers Net Prices" or on the basis of confidential discounts therefrom negotiated with the Tire Companies. The "Base Manufacturers Net Prices" lists were put into effect originally under the name of "Special Manufacturers Net Prices", to set out the special preferential prices at which important vehicle manufacturers could purchase their requirements of tires and tubes. When the need for better than "Dealer Billing" prices arose for smaller original equipment manufacturers or assemblers, the "Preferred Manufacturers Net Prices" lists were initiated. Prices on the "Preferred" lists are a certain percentage figure above those on the "Base" lists.

Prices to original equipment manufacturers are much lower than those in the replacement market. A comparison between one tire company's Consumer Price list, Dealer Billing Price list and Base Manufacturers Net Prices list in 1947 shows a 600x16 4 ply tire quoted at \$21.55, \$16.70 and \$7.29, respectively. A number of reasons have been advanced for this disparity, among which is the fact that sales and excise taxes are included in the prices at which the manufacturer sells to the dealer and consumer, whereas these are exempted from sales to manufacturers who hold licences. There are also much less selling and transportation expenses involved in selling to car manufacturers than there are in selling to dealers across the country. It would seem, however, that manufacturers' prices have no relationship at all to prices in the replacement field but are based on a similar price structure in the United States. I. G. Needles, then Vice-President in charge of sales of Goodrich, on being asked whether original equipment prices in Canada were based upon "Dealer Billing" prices, said:

"A. No, it is based upon the relationship to a similar pricing structure in the United States.

BY THE DEPUTY COMMISSIONER

Q. and there is no necessary relationship with the dealer price here at all?

A. No, none at all."

(Evidence p. 5587)

Chapter 2 - The Rubber Association of Canada

A. Membership of the Tire Companies in the Association

All the Canadian manufacturers of tires and tubes mentioned above were, at the time of the investigation, members of The Rubber Association of Canada (the "Association"). Dominion, Firestone, Goodyear and Gutta Percha became members of the Association in 1920, the year of its formation. Goodrich joined the Association in 1925 and Seiberling in 1927. Dunlop, who had resigned from the Association for a short while, rejoined around 1937. General, although not a manufacturer, was also a member of the Association at the time of the investigation, having joined at the time of the company's incorporation in 1934, resigning from it a few years later and resuming membership in 1942.

The above Companies, in their capacity as tire and tube manufacturers and distributors, have been commonly referred to in the industry as constituting the "Tire Division" or "Tire Group".

B. Meetings of the Tire Division and Functions of the Secretary

One of the main activities of the Tire Division has been the holding of a series of meetings attended from time to time by all of the Companies in the Group. From the end of the year 1936 to the beginning of the year 1948 more than 150 meetings of the Group took place. In the great majority of cases the officials of the Tire Companies present at these meetings were general managers or sales managers or their representatives, although on occasion, depending upon the purposes, meetings were also attended by treasurers, controllers, technical managers and other lesser officials.

The meetings which in some cases took place at regular intervals and in others on call were usually held under the chairmanship of one of the representatives present. An agenda of the subjects to be discussed was frequently prepared in advance and sent to the Companies concerned by the secretary and manager of the Association who also acted as recording secretary of these meetings and as such attended most of them. Mimeographed minutes headed "Tire Meetings" embodying the matters discussed, rejected or agreed upon at these meetings were prepared by the secretary and distributed by him to those concerned. A complete set of these minutes was kept by the secretary at the Association offices in Toronto. Many of the pricing and other arrangements and agreements concerning tires and tubes which are enumerated in the succeeding sections were made at these tire meetings, and numerous other matters such as excise poundage taxes, important export questions, labour problems and technical matters concerning the manufacture of tires and tubes were also taken up. During the period of wartime controls many control problems were dealt with at these meetings.

With respect to these minutes it should be recalled here that, as indicated in Part I, tire minutes were amongst those reviewed in the summer of 1947 by G. B. Smith who was then the Secretary and Manager of

the Association. In his evidence before the Commission, Mr. Smith testified that he could not recall whether in fact he had made actual changes in any tire minutes. The post-control minutes found in the office of the Association and the Tire Companies do not record all the arrangements and agreements which other evidence indicates to have been made at the meetings to which the minutes relate. Whether this is the result of original omission or of subsequent deletion was not established.

Chapter 3 - Wartime Controls on Tires and Tubes

During a period beginning in 1941 and ending in 1947 the rubber industry was, in a great many respects, under wartime controls. The general nature of such controls is discussed in Part I but it is desirable here to review briefly some of the measures that particularly affected the Tire Division, because of their bearing on the control and post-control periods.

The rubber industry was among the most closely controlled of all industries and the Tire Division was perhaps the most closely controlled of all its divisions.

It will be remembered that one of the first steps taken by the control authorities, after rubber was declared a "supply" in 1941, was to devise a plan whereby the amount of rubber used by the rubber industry for civilian purposes would be reduced on a sliding scale so as to achieve a reduction of 30 per cent by the month of February 1942. The attack on Pearl Harbor and the impending curtailment of supplies of raw rubber from the Far East made it necessary to take more drastic measures for the conservation of rubber, especially in tires and tubes which account for approximately 70 per cent of all the rubber used by the whole rubber industry in Canada.

Accordingly on December 11, 1941 the Controller of Supplies froze all dealers' supplies of new automobile tires and tubes across the country and on December 12 stopped the production of tires and tubes for civilian purposes. Inventory was taken of tires and tubes in dealers' hands, in warehouses and in manufacturers' plants, as well as of rubber available and in January 1942 new tires and tubes were released to those who certified that they were required for essential services. This was changed in May 1942 to a rigid ration-permit system.

No passenger tires for civilian use were made in 1942 or the first half of 1943, except those already in process at the end of 1941, and those sold to essential users came from available stocks. In mid-1943, production of passenger tires for civilian purposes was started again with reclaimed rubber and at the end of 1943 synthetic rubber became available for such production which enabled a gradual loosening of tire rationing. The cessation of hostilities in 1945 and the conversion from military to civilian production enabled control authorities to free tubes from rationing in June 1945 and tires generally on January 1, 1946.

Bus-truck tires under seven inches were first treated in the same way as passenger tires, whilst manufacture of a certain number of bus-truck tires over seven inches was permitted in 1942 and 1943 for use in essential transportation services. As most bus, truck and agricultural tire users were then recognized to be engaged in essential services, the majority of them were eligible for new and used tires from the beginning, but not until December 1, 1945 were new bus, truck and farm tractor tires, and then with certain exceptions, removed from rationing and freed for general retail delivery.

In the first years of the control period governmental authorities held a tight rein over all possible aspects of the production of tires and tubes. They allocated raw rubber on a quota basis, dictated sizes and manufacturing specifications, controlled the use of raw, reclaimed and synthetic rubber, allocated production and generally took every measure necessary to ensure adequate supply of tires and tubes for the armed forces and after that as ample supply as possible for essential civilian users. The Government was greatly assisted in this work by the Association and by committees recruited from the rubber industry, including the Rubber Conservation and Technical Committee. The Tire Sub-Committee of the latter Committee worked in close collaboration with the Rubber Controller, giving expert advice to the latter on ways and means of conserving rubber.

Production controls were relaxed gradually. Reclaim and scrap rubber, which had been brought under effective control in March 1942, were decontrolled together with some synthetics by August 1944 and Butyl synthetic, used chiefly in tubes, was decontrolled in March 1946.

Crude rubber however, was kept under control till the end of March 1947. Production quotas were lifted when tire rationing was abolished on January 1, 1946 but restrictions were kept till March 31, 1947 on the percentage of natural rubber going into the production of tires and tubes.

As with other rubber products, tire and tube prices came under general price control on December 1, 1941. Ceilings or maximum prices were set on tires and tubes, being the maximum prices in effect during the period September 15 to October 11, 1941. These ceiling prices on civilian goods were not lifted till April 2, 1947 when all controls were abolished on tire and tube prices except those establishing maximum prices on tires and tubes for tractors and farm implement vehicles which were retained till September 15, 1947.

When, during the control period, the industry had occasion to apply for a new ceiling price for a new or existing tire the application was made to the Rubber Controller usually through the medium of the Association which secured the necessary cost information.

Upon the suspension of price controls at the beginning of April 1947, the Rubber Controller requested and was given an assurance by the Tire Companies that, barring emergencies, there would be no increases in the prices of replacement tires and tubes for at least three months from April 1, 1947.

Chapter 4 - Industry Agreements and Arrangements Relating to Replacement Tires and Tubes

A. General

Since passenger automobiles and other vehicles will normally outlast two or more sets of tires and tubes it follows that of the two markets, replacement and original equipment, the replacement market is the larger.

The following are figures giving the number of tires shipped by the Tire Companies to each market during the periods of time from January 1, 1947 to November 29, 1947 and from January 1, 1948 to November 27, 1948:

Table VI

Number of Passenger, Bus-Truck and Implement and Tractor Tires Delivered by the Tire Companies to original Equipment and Replacement Markets, 1947-48⁽¹⁾

	<u>1947</u>		<u>1948</u>	
	<u>Original Equipment</u>	<u>Replacement</u>	<u>Original Equipment</u>	<u>Replacement</u>
Passenger	819,539	2,111,686	797,143	1,892,271
Bus-Truck	345,664	514,845	269,566	429,322
Implement and Tractor	<u>320,561</u>	<u>78,616</u>	<u>421,152</u>	<u>97,403</u>
Total	1,485,764	2,705,147	1,487,861	2,418,996

(1) The Rubber Association of Canada, Weekly Tire and Tube Report, December 1, 1948.

The reverse situation in implement and tractor tires stems from the fact that the great majority of farm tractors with rubber tires in use in 1947 and 1948 were of recent production and had not had time to create a demand on the replacement market.

All of the Tire Companies have been engaged, during the period covered by the investigation, in the sale of passenger and bus-truck tires and tubes in the replacement market. Although it has been the major market of all the Companies, it has been especially important to companies such as Seiberling, Gutta Percha and General whose sales of tires and tubes to original equipment manufacturers have been very small.

The smaller amount of replacement sales of implement and tractor tires has been handled largely by Firestone, Goodyear, Dominion and Goodrich.

As the succeeding sections will show, the evidence obtained during the course of this investigation indicates that for the period under review, such matters as list prices, discounts to dealers and other purchasers, terms and conditions of sale and warranties have been subjects of agreement among the Tire Companies.

B. List Prices

(a) Passenger, Bus and Truck Tires and Tubes

Except during the period of price control, general price changes affecting the whole range of replacement passenger, bus and truck tires and tubes have taken place in the tire industry about once a year. In the period of time between the end of 1936 and the end of 1941, when maximum prices were imposed by the Government, the evidence indicates that "Consumer List" and "Dealer Billing" prices were changed some four times and in each case the new price levels were decided and agreed upon by general managers present at a tire meeting, and in most cases the revised prices were distributed to the industry from the office of the Association.

During the years 1934 and 1935 the tire industry had operated under a self-imposed "Tire Code" which not only entailed the rigid regulation of all aspects of replacement prices of tires and tubes but provided also for the disciplining of tire dealers who sold to consumers below the fixed level. The Code, the operation of which had been looked after by an employee of the Association known as the "Supervisor of the Tire Division" broke down toward the end of 1935 or the beginning of 1936. About this time Dunlop and General left the Association. W. H. Funston, President and General Manager of Firestone, gave his reasons for the failure of the Tire Code in a circular letter to the general managers on September 9, 1936:

" . . .

The failure of our recent attempt towards retail stability laid in the fact that the rubber companies attempted to police and dictate the operation of the dealer's own business.

. . .

. . ."

(Exhibit 2058)

The abandonment of the Tire Code and the withdrawal of Dunlop and General from the Association did not mean the stopping of meetings of the Tire Division. Proposals were put forth throughout the summer and fall of 1936 for a basis of tire merchandising on which agreement could

be reached. These proposals were expressed in letters exchanged by general managers of various Tire Companies, including Dunlop.

The following are excerpts from the minutes of a general managers' tire meeting held on November 12, 1936 under the chairmanship of W. A. Eden, then President of Dominion, and which was attended by officials of Dominion, Firestone, Goodrich, Goodyear, Gutta Percha and Seiberling:

"Mr. Eden, who had been asked to examine the tire merchandising situation, stated that there was need for and justification for an increase in tire and tube prices . . . The tire merchandise supervision plan of last year had failed because it had been too exacting, had attempted too much and had failed to recognize fundamental differences in the practices and the strength of various companies. A more flexible policy with adherence based on good-faith, would succeed, he believed, where the other had failed . . .

Mr. Eden said he would put a proposition before the meeting and asked for its acceptance, rejection or modification if anyone had an improvement to suggest.

He proposed --

- That there be a modest increase in tire prices;
- That existing discount rates and other agreed terms be continued;
- That existing special deals may continue in effect until such time as they can be dealt with in a manner acceptable to all companies;
- That no new special deal or consignment arrangement will be made with any account;
- That national accounts now enjoying irregular terms shall be reported to the Association office;
- That if any company cannot live with the programme and feels that it requires and is entitled to something different to equalize its position either over the whole country or at some point or in some district, it may request a meeting for special allowance;
- That any such representations will receive fair consideration and be agreed to as far as such can be agreed to in fairness to all;
- That hereafter no special allowances or terms are to be quoted to accounts unless they have been agreed to at a meeting;
- That at various points, Tire Dealers be encouraged to form local associations for the regulation of tire merchandising;
- That each company is to have its distributor and oil company accounts adhere to agreed practices.

Mr. Eden stated that the Dunlop Company was willing to agree to the foregoing and asked each of the other companies if they were willing to give the plan a fair and sincere trial.

Each company signified its willingness and the following telegrams were sent to company branches and distributors:

E A S T

TIRE AND TUBE PRICES WITHDRAWN HOLD BILLING FOR NEW PRICES
STOP PASSENGER CASINGS TUBES ADVANCED FIRST AND SECOND LINES
SEVEN AND HALF PERCENT THIRD LINE TEN PERCENT STOP ALL HIGH
PRESSURE TRUCK CASINGS AND TUBES INCREASE FIVE PERCENT STOP
BUS BALLOON CASINGS NO CHANGE FIVE PERCENT INCREASE ON TUBES
STOP EFFECTIVE CLOSE OF BILLING NOVEMBER TWELFTH STOP NO NEW
CONSIGNMENTS OR NEW SPECIAL DEALS OF ANY KIND TO BE OFFERED.

W E S T

TIRE AND TUBE PRICES WITHDRAWN HOLD BILLING FOR NEW PRICES
STOP PASSENGER CASINGS FIRST LINE FOUR PLY ADVANCE SEVEN AND
HALF PERCENT SIX PLY TEN PERCENT SECOND LINE FOUR AND SIX PLY
FIVE PERCENT THIRD LINE NO CHANGE STOP PASSENGER TUBES INCREASE
FIRST AND SECOND LINES SEVEN AND HALF PERCENT THIRD LINE TEN
PERCENT STOP BUS TRUCK HIGH PRESSURES INCREASE TEN PERCENT IN
FOLLOWING SIZES 34x5, 36x6, 38x7, 36x8, 40x8 and 38x9 OTHER SIZES
NO CHANGE STOP BUS BALLOON CASINGS NO CHANGE STOP ALL BUS
BALLOON AND HIGH PRESSURE TRUCK TUBES INCREASE FIVE PERCENT
STOP EFFECTIVE CLOSE OF BILLING NOVEMBER TWELFTH STOP NO NEW
CONSIGNMENTS OR NEW SPECIAL DEALS OF ANY KIND TO BE OFFERED.'

It is understood that in the next Eastern catalogue tire prices will be advanced 11% on first and second lines and 10% on third line sizes and in Western catalogues the prices will be advanced with those of the Industry."

(Exhibit 2194)

Dunlop was present at the next general managers' tire meeting which was held on December 10, 1936 (Exhibit 2193) when there was a general discussion of the tire merchandising conditions and resumed its attendance at subsequent tire meetings. General remained outside of the Association until 1942 although V.P. Reid, the senior official of the company in Canada, attended some of the meetings of the Group during the intervening period and received copies of tire meeting minutes either from the Association or from one of the member companies.

The minutes of a general managers' tire meeting of May 14, 1937 contained the following entry:

" . . .

Tire and Tube Prices, it was agreed, should be changed to correct inconsistencies that have developed between the prices of various sizes and types of casings and tubes and also to meet increased costs of materials and manufacturing."

(Exhibit 2188)

The following are the recorded minutes of a general managers' tire meeting held on August 30, 1937:

"TIRE MEETING - General Managers

Toronto, August 30th, 1937.

A meeting of General Managers of Canadian tire companies was held at 2 p.m., Monday, August 30th, 1937.

There were present: Messrs. A. G. Partridge, Goodyear; J. A. Livingston, T.M. Mayberry, Firestone; J. R. Belton, Gutta Percha; J. A. Martin, Dominion; I. G. Needles, Goodrich; M. L. Brown, Seiberling; V.P. Reid, K. W. Macdonald, General; L. E. Levey, Dunlop.

Mr. Partridge was appointed chairman.

Tire Prices were changed and the following telegram was sent to company divisional representatives:-

EFFECTIVE MIDNIGHT, AUGUST 30 TIRE PRICES INCREASED BOTH EAST AND WEST AS FOLLOWS: APPROXIMATELY FIVE PERCENT ON FOUR AND SIX PLY FIRST AND SECOND LINE PASSENGER CASINGS STOP TWO AND HALF PERCENT ON FOUR AND SIX PLY THIRD LINE PASSENGER CASINGS STOP PASSENGER CAR TUBES INCREASE APPROXIMATELY FIVE PERCENT ON THIRD LINE ONLY STOP HIGH PRESSURE TRUCK TIRES FIRST LINE CASINGS TEN PERCENT SECOND LINE SEVEN AND HALF PERCENT STOP LOW PRESSURE TRUCK AND BUS BALLOONS FIVE PERCENT ON BOTH FIRST AND SECOND LINE CASINGS STOP ALL TRUCK TUBES ADVANCED APPROXIMATELY TEN PERCENT STOP HOLD BILLING FOR NEW PRICE LISTS.

Adjourned."

(Exhibit 2182)

The next price change disclosed by the evidence was a reduction in list prices effective June 1, 1938 as appears from the following excerpt from the minutes of a general managers' meeting of May 31, 1938:

"Price Changes: The following is agreed to, effective June 1st:

Passenger Casings

1st line no change except West takes Eastern prices.

2nd line - East down 5%, West to be 5% over East.

3rd line - 7½% off 475-19, 450-21, 500-19, 550-17 and 600-16 and only 5% down for other third line sizes - West 5% over East.

30x3½ - No change all lines.

Passenger Tubes

1st line no change

2nd line down 5%

3rd line down 10%

Truck Casings

1st line down 2½% - West 5% over East.

2nd line down 5% - West 5% over East.

30x5 1st and 2nd line - no change East or West.

Truck Tubes

1st line down 5%
2nd line down 10%

The meeting adjourned."

(Exhibit 2169)

The next general price change disclosed by the evidence was the one that affected the price of the secondary lines of passenger tires.

In order to compete both with special and private brands of tires made in Canada and with importations of special and private brands from the United States, the Tire Companies have, at times, in addition to the regular first line or 100 level line of tires, manufactured and sold under their own brand names a second, a third and for a short while a fourth line of tires. These secondary lines were priced on levels progressively lower than that of the first line so that, taking the price of a first line tire as the 100 level, the same type of tire in the second line would, for example, become an 80 level tire if it was priced 20 per cent below the first line.

The difference between a first line tire and the others is one of tread design, rubber content, cord quality and resistance. The quality of these secondary lines is not necessarily uniform as between the various sizes of tires. In this respect a senior official from one of the Companies said in his evidence:

"Q. Is there a difference in the quality of [tire] carcass in the [second line] also?

A. Well, it may have. It varies some by sizes of [second line]. As to the fabric used, you mean?

Q. Yes?

A. Maybe, yes. That is a tire that was brought up due to competitive conditions or buying habits that may be developing on the part of the buyer. . . . Now the quality features of it vary. Some sizes, for instance, might have better fabric than perhaps another size that is an obsolete tire used on a very old make of car. We know it isn't going to run any sixty miles an hour, and therefore you don't need some of the features that you need in sizes that are still on modern, fairly new, type of cars."

(Evidence p. 6883)

The difference in price between the lines was not necessarily proportionate to the difference in quality. This was especially true in the case of the fourth line as there was a limit to what the Tire Companies could take out of their product whilst still producing a safe tire. The same witness quoted above, in commenting on this point with respect to second line tires, said:

"Q. Are you in a position to say anything as to the quality differences between the (second line) and the (first line) relative to the price differences? Do the price differences reflect quality?

A. No, it doesn't.

Q. You mean they may be closer in quality in fact than the price reflects?

A. That is right."

(Evidence p. 6884)

In 1939 the tire industry was manufacturing three lines of passenger car tires and two lines of bus-truck tires. The relative price levels for the second and third lines of passenger car tires were 81.6 for the second line and 61.2 for the third line. Although the industry's production of secondary line bus and truck tires was relatively very small, the number of secondary line passenger tires produced in 1939 was quite appreciable.

Feeling that a still lower level line of tire was necessary to combat the competition from certain domestic and imported privately branded passenger car tires, Goodyear on December 14, 1939 announced to the industry in a letter to the secretary of the Association, its intention of adding to its range a fourth line in nine sizes of passenger car tires at a 52.5 level. Goodyear's plan was to raise the price level of the second line from 81.6 to 87.5 and the third line from 61.2 to 70. In his letter, R. C. Berkinshaw, General Manager of Goodyear, said:

". . .

This means an increase in the price levels of the 2nd and 3rd lines, which will compensate to a certain extent for the 52.5 level at which the 4th line will be sold.

". . ."

(Exhibit 2061b)

The majority of the other companies registered their opposition to Goodyear's plan and countered with various proposals of their own, such as reducing the lines to two with a fairly low second line level or introducing a fourth line in two or three sizes of passenger car tires only. G. W. Sawin, then Vice-President and General Manager of Goodrich, in a circular letter to the general managers of the Tire Companies dated December 27, 1939, made a strong plea against the introduction of a fourth line. The letter contained a number of alternatives and ended:

"The above recommendations are made by us in face of the fact that we are prepared with full equipment and capacity to move on a fourth line program. We, however, want to be constructive as much as anyone. Our own figures, and our own experience over many years, lead us to believe that drastic action is not advisable at this time.

However, we want to contribute to the unification of industry policies and are prepared to make our contribution in that direction, providing a full opportunity is given all members of the industry to work together toward the selection of the final program. On this point, we feel that such an opportunity is being given."

(Exhibit 2064)

The matter was finally debated at a general managers' meeting at which Goodyear's views prevailed although five other tire companies were opposed to the idea. The following is an excerpt from the Association minutes of that meeting held on January 3, 1940:

"Fourth Line Tire: There was a further discussion of Goodyear's December 15th announcement of intention to add a fourth line tire to the existing three lines. The subject having previously been discussed at a meeting on December 21st, and subsequent to that date several companies having submitted comments upon or proposed modifications of the Goodyear program.

On motion for adoption, the opinions of companies were taken as to the program of adding a fourth line and changing differentials of prices between lines.

Goodyear adhered to its original proposals as to the First, Second and Third lines, but submitted some modifications of its agreed Fourth line proposals, these having been suggested by correspondence.

Firestone favoured the introduction of the Fourth line in the nine sizes proposed by Goodyear, but with modification of prices.

Dunlop favoured adding a Fourth line in two sizes only; that is in the 600-16 and 525-17.

Dominion, Gutta Percha, Seiberling, Goodrich and General were opposed to the addition of a Fourth line.

Goodyear stated that it felt strongly that Fourth line tires in the nine sizes it proposed were necessary for competitive reasons.

It was agreed that each company would have to adopt a new program in consequence of the new Goodyear program.

Goodyear agreed to send companies its new program with the First, Second, Third and Fourth lines priced by sizes according to its proposed differentials.

Other companies agreed to send their revised programs, either to companies or the Association office for distribution after the receipt of the priced Goodyear program enabled each of them to draw up a new program.

Adjourned."

(Exhibit 2144)

Not all companies followed the program sent them by Goodyear subsequent to this meeting. Some introduced a fourth line in a couple of sizes only, others did not price their fourth line tires as low as Goodyear and "straddled" the prices of their second and third lines. The net result was a lack of uniformity in the industry's prices of secondary lines.

Later that year, on June 25, the day after the announcement of the Federal Government budget, the following circular letter was sent by the secretary of the Association to senior officials of all the Tire Companies, except General:

"THE RUBBER ASSOCIATION OF CANADA
210-11 COMMERCE AND TRANSPORTATION BLDG.,
TORONTO

June 25th, 1940.

. . .

Dear Sir:

This is to confirm that by telephone to-day Goodyear, Firestone, Dunlop, Gutta Percha, Goodrich, Dominion and Seiberling agreed to discontinue selling tires and tubes at present prices, and until such prices were considered at a meeting in the light of increased poundage tax on tires and tubes. It was understood that orders taken at present prices will be filled at present prices.

Further, it was understood that companies would wire their field organizations to the above effect. The following is a copy of the wire Goodyear has sent to its branches:

"Effective June 26th withhold all billing for any orders tires and tubes pending receipt of new prices. Bona fide orders taken previous to June 26th may be shipped and billed at prices in effect June 25th."

(Exhibit 2824A)

The wire sent by Dunlop to its field organization on June 25 was along the same line:

"COMPETITORS AS WELL AS OURSELVES ACCEPTING TIRE AND TUBE ORDERS RECEIVED UP TO AND INCLUDING TODAY'S DATE AT PRESENT PRICES STOP ALL TIRE AND TUBE ORDERS BEARING DATE LATER THAN THE TWENTY-FIFTH WILL BE HELD FOR BILLING UNTIL ADVISED OF ACTION THAT MAY BE TAKEN IN VIEW OF ADDITIONAL EXCISE TAX ON SAME STOP SUGGEST YOU ADVISE BY TELEPHONE SALESMEN AND OTHERS INTERESTED."

"LEVEY!"

(Exhibit 2553B)

The general managers' meeting to deal with the new tire and tube prices was held on June 27, 1940:

"TIRE MEETING - General Managers

Toronto, June 27, 1940.

A meeting of general managers of Canadian tire companies was held at the Royal York Hotel on the afternoon of Thursday, June 27th, 1940.

There were present Messrs. A.G. Partridge and R.C. Birkenshaw, Goodyear; G.W. Sawin and I.G. Needles, Goodrich; J.E. Jones and L. E. Levey, Dunlop; P. C. Jones and J. A. Martin, Dominion; H. W. Gregory, Seiberling; W. H. Funston and J. A. Livingstone, Firestone; F. A. Warren and J. R. Belton, Gutta Percha.

Budget Taxes and Tire Prices: It was agreed that, to take care of the increase of poundage excise tax on tires and tubes to 5% per pound and partially take care of the 10% tax imposed on imported manufacturing materials, there would have to be an increase of 10% for tires and of 3% for tubes on the present low prices of these articles. The following message was sent by companies to their branches:

'Effective opening business June 26th all list prices on passenger, truck, motor-cycle casings advanced 10%, all tubes 3%. This advance due to increased costs raw materials and increased poundage-excise, war exchange and other taxes. New price lists being mailed.'

..."

(Exhibit 2141)

Although not mentioned in the minutes, the prices of agricultural tractor casings were also covered in the following telegram which Dunlop sent to its field organization on the day of the meeting:

"EFFECTIVE OPENING BUSINESS JUNE TWENTY SIXTH ALL LIST PRICES ON PASSENGER TRUCK MOTORCYCLE AND AGRICULTURAL TRACTOR CASINGS ADVANCED TEN PERCENT ALL TUBES THREE PERCENT stop THIS ADVANCE DUE TO INCREASED COST RAW MATERIALS AND INCREASED EXCISE POUNDAGE WAR EXCHANGE AND OTHER TAXES stop NEW PRICES BEING MAILED.

'LEVEY!'

(Exhibit 2553A)

No general change in replacement prices took place in 1941 except that the minutes of a sales managers' meeting held on October 1, 1941 indicate that, in respect of third and fourth line passenger car tires, new and higher prices were set up to be effective the following day (Exhibit 2122). This price revision, which had been discussed in

general terms at previous meetings, was made as a result of increases in the catalogue prices of certain privately branded tires with which third and fourth line tires were primarily aimed to compete.

Price control regulations which came into effect on December 1, 1941 established ceiling prices on replacement tires and tubes at the list prices in effect during the "basic period" of September 15 to October 11, 1941. The Tire Companies, shortly after the imposition of price control, were authorized by the Government to discontinue the production of secondary lines and thus the list prices of first line tires and tubes which had come into effect on June 26, 1940 became the authorized ceiling prices under price control legislation.

The elimination of secondary line prices resulted in raising the overall price level of passenger car replacement tires and tubes sold in Canada during the control period. The matter is referred to in a letter dated February 3, 1947 from H. W. Gregory, Vice-President in Charge of Sales of Seiberling, in reply to a distributor who had brought up the question of lower priced American tires being sold in Canada:

" . . .

We have no illusions with reference to our present price structure. In the Canadian price regulations we find ourselves with a price on passenger tires out of line with passenger tire prices in the U. S. and we are in the same position with reference to truck tires but in the opposite direction as compared with the U. S. This was brought about by the method used in Canada of regulating prices. We adopted for price controls a historical pattern of prices that were used during the base period. In the U. S. prices have been adjusted from time to time based on costs but still under price regulation. In our situation we had second, third and fourth line tires in the passenger group in the base period but we were permitted to use first line prices throughout which in effect gave the Industry a considerable increase in prices on passenger tires. The duplication of lines in the truck tire field was negligible, therefore, first line prices on truck tires reflected no higher recovery to speak of. In prewar years our main profit came from truck tires and due to the duplication of lines we had difficulty in making a profit on passenger tires. Now the situation is entirely reversed so far as the Canadian market is concerned but the American market has, by the adjustment of prices, maintained approximately the same profit relation as existed in prewar years.

I think this explains then why it is possible to bring in passenger tires from the U.S. that undersell our prices here but

since the demand is so heavy and since the price is no more disturbing than mail order prices created by the Industry in Canada, there would seem to be no disturbing feature to this situation at the present time.

. . ."

(Exhibit 2369A)

But the problem of importation of American tires grew more acute in the following months, several of the Tire Companies receiving complaints from their branches that competition from this source was prevalent in their areas. The disparity between American and Canadian replacement prices was such that certain of the more popular sizes could be imported into Canada, after paying a 25 per cent duty, and 8 per cent sales tax and the 5 cents per pound excise tax, at a lower laid-in cost than the Canadian "Dealer Billing" price. The subject came up for discussion at a sales managers' tire meeting held on July 8, 1947:

". . .

IMPORTATIONS: The meeting discussed at considerable length the situation regarding imports of tires into Canada, which was viewed with considerable concern. It was noted that in April, imports of tires were about 10 times the average pre-war importations by units. Since April, of course, U.S. prices have been reduced, and it was anticipated that imports for June and July would show a still further increase.

To illustrate the situation, Mr. Cooper stated that a Canadian dealer can get an imported 600-16, 4 ply regular brand casing laid-down for about \$15.83 as against the Canadian dealer billing price of \$16.70. Special brands can be imported at still lower prices. For example, Dominion reported that for a test they had brought in 100 special brand 600-16 casings which had laid down at about \$12.00. In this connection it was pointed out that unknown imported brands are not meeting with ready consumer acceptance. The chief causes for concern are, therefore, that standard brands can be laid down from the U.S. at less than Canadian dealer billing prices and that the ordinary consumer can save money by buying tires in the U.S.

It was agreed that the situation has reached the point where action to meet it is necessary. . . .

. . ."

(Exhibit 2206)

The sales managers recommended that the situation be studied by a sub-committee of sales managers, a recommendation which was approved by the general managers at a meeting held July 25, 1947:

" . . .

The recommendation that Sales Managers meet to study the import situation was approved. As to procedure, it was agreed that the matter be first studied by a Committee of all Sales Managers, who could then appoint a sub-committee to study suggestions in detail and submit recommendations back to the Sales Managers group as a whole, and finally to General Managers. The General Managers emphasized the desirability of taking this matter in hand without delay. They further instructed the Secretary to request all companies to report their own imports of tires by months to the Association, so that these may be deducted from the imports shown by official statistics to give a net figure of imports through non-industry channels.

. . ."

(Exhibit 2205)

A meeting of sales managers was held in Toronto on August 28, 1947 at which all the Tire Companies were represented. The minutes themselves do not refer to a price revision (Exhibit 2637A), but attached to a copy of the minutes found in the files of General are two sheets entitled "PROPOSALS FOR NEW TIRE PROGRAM" (Exhibit 2637B) stamped "AUG 29 1947", as is also the single sheet of minutes. Identical copies of the Proposals sheets were found in the files of Goodyear (Exhibit 2422) and Dunlop (Exhibit 2536) and another sheet entitled "FURTHER PROPOSALS FOR NEW TIRE PROGRAM" (Exhibit 2537) stamped "SEP 5 1947" was also found in the files of Dunlop.

The "Proposals for New Tire Program" were as follows:

"DUNLOP: Price revisions to be based on a mark-up over U.S. prices. They require a reduction of dealer discount from 22½% to 20% on casings and from 35% to 30% on tubes, and elimination of cash discount to be made at same time as price reductions are made.

A revision of bonus and general dealer compensation to be studied in time to be made effective with the new tire year. Change the bonus year to calendar year by extending the year starting November 1st, 1947, to December 31st, 1948. Thirty days price protection to be given to dealers, the same as in the U.S.

GENERAL: Same as above.

GUTTA PERCHA: Same as above.

FIRESTONE: For immediate action, a maximum cut of 10% in list prices of tires and tubes; with dealer discounts reduced from 22½% to 17½% on casings and from 35% to 30% on tubes.

At the beginning of the next tire year lower qualification for maximum bonus of 10% from \$20,000 to \$10,000; also lower qualification for maximum truck bonus of 5% from \$15,000 to \$5,000. Add a new super-volume bonus on volume of between \$10,000 and \$50,000 and over,

scaling up to a maximum of 2%. Introduce a 5% associate dealer discount on a maximum of 1/3 of a dealer's volume, on all sub-dealer business up to \$1000 volume. Bring out a second-line tire at 85 level with 15% dealer discount.

GOODYEAR: An immediate reduction approximating 17½% (600-16) revised by sizes depending on the position of respective sizes against U.S. prices.

No immediate changes in trade discounts or bonus situation.

Retain cash discounts.

Announce with new prices that bonus for volume for ensuing tire year will be calculated on a tax-free basis after reduction of sales and excise taxes.

Bonus scale, trade discounts and cash discount to be subject to immediate study after price reduction and changes agreed upon in these features to be effective for bonus year 1948.

GOODRICH: (1) Revision of prices downward calculated by referring to U.S. prices marked up about 20-25%.

(2) Trade discounts, bonuses to be discussed after new prices announced.

(3) A reduction in the spread in the bonus for volume scale between large and small dealer, with a downward revision of maximum volume requirements.

(4) Change the bonus year to the calendar year by extending the year starting November 1, 1947, to December 31, 1948.

(5) Eliminate cash discount.

DOMINION: An early price revision, reducing prices only when necessary to meet U.S. imported prices.

Subsequently, a modification of trade discount and bonus structures which will narrow the dealer's margin of profit. Elimination of cash discount. Change bonus year to calendar year.

Strongly opposed to immediate introduction of second line."

(Exhibits 2422, 2536,
2637B)

J. A. Lucas, Sales Manager of Dominion's Tire Division, said with reference to the "Proposals":

"Q. I would like to show you another document which is entered as

Exhibit 2637-B. It is headed, 'Proposals for New Tire Program', and it is attached to Exhibit 2637-A, which is apparently a copy of minutes of a meeting held on August 28, 1947, similar to Exhibit 2201, which you have just looked at. I want to ask you, Mr. Lucas, if, after looking at Exhibit 2637-B, which is entitled 'Proposals for New Tire Program', and especially the proposal under 'Dominion', you recall whether that was a proposal of yours set forth at a meeting around that time?

A. Yes, I do.

Q. That was a downward revision in prices, I would gather from reading these various proposals, was it not?

A. Well, I believe that shortly after this was when Goodyear cut prices 15 per cent.

Q. Why did you want to revise prices downwards?

A. We didn't want a price revision downwards.

Q. But you said you proposed this?

A. This was a shadow-boxing competition -- Goodyear had told us they were going to cut prices -- this was just a lot of empty conversation, no matter what I said -- they said they were going to cut prices -- that is what subsequently happened, and we trailed along and cut ours. We were not a factor in establishing any of those prices.

. . .

Q. Did Goodyear give you any reason for their reduction?

A. They may have given us some alleged reason, but we knew why.

Q. Why?

A. They felt they were beginning to feel the pinch of competition and by reducing prices they would embarrass their competitors, that being the determining factor in business, and get a chain recovery -- they were a big company.

. . .

Q. What were the reasons alleged?

A. Importations, dealers making too much profit, which was nonsense -- I have just forgotten the reasons they advanced, but they were so fantastic they meant nothing to me -- I felt I could see their strategy, and I discussed it with Mr. Hopton, and we just decided to sit back and see what they actually did.

. . .

Q. I notice in that Exhibit 2637-B, Dunlop, General, Gutta Percha, Firestone and Goodrich also came out with proposals apparently at that time. Do you recall that?

A. Yes.

. . .

Q. Will you look at the proposal under the heading, 'Goodyear', on this document Exhibit 2637-B, and tell me if that is what actually happened as far as reductions were concerned?

A. I do not know if Goodyear did this exactly - as far as these are concerned, we did do some and some we didn't.

Q. I understand the changes they made are not identical with those reported. For instance, 'No immediate change in bonus situation.' There was a change in the bonus situation which was concurrent with the price reduction?

A. Yes, on their part."

(Evidence pp.7862-66)

Other witnesses also stated that the reduction had been forced upon the industry by Goodyear which thought to improve its own position by so doing and merely went through a pretense of consulting the other companies.

In the fall of 1947 the Tire Companies came out with new re-placement list prices on passenger and bus-truck tires and tubes involving reductions of approximately 10 to 15 per cent. In most cases the new prices were expressed to be effective September 12, but in two cases they were expressed to be effective September 15. The prices contained on these lists were substantially identical except that Dunlop appears to have first put out a temporary list containing minor differences and to have brought out its permanent and conforming list some months later, but retroactive in effect to September 12.

On September 15, 1947 I. G. Needles of Goodrich wrote to an official of his parent company in the United States:

". . .

Effective September 12th, prices were reduced in varying amounts up to 15% on all passenger and truck tires and tubes excepting only Seal-O-Matic tubes. Farm and Implement Tire and Tube prices remain unchanged.

This move was made necessary by the rather heavy importation of American tires which was starting to grow rapidly, and a 6,00-16

could be imported and placed on the market here for prices around \$17.45 each while we were collecting \$21.55 for a 6.00-16 4 ply casing.

Probably the scarcity caused a good deal of the endeavour to import and once it was learned that importation could be arranged and fair profits made, some of the aggressive merchandisers who do not have satisfactory sources of supply in Canada immediately moved in on the importation basis.

So with the 6.00-16 4 ply at \$18.45, which is our new price, very slightly higher than imported tires from the States of unknown brands in Canada, that is such tires as Pharis, the importation phase is probably pretty well trimmed.

.. ."

(Exhibit 2785-A)

The Replacement Tire Pricing Committee whose activities are described in detail at a later stage, and whose function was to work out the details of prices or price changes which had been agreed upon by the Tire Companies, apparently met for that latter purpose at this time.

T. M. Ponton, an employee of Dunlop, stated in his evidence:

"Q. And what is the last meeting that you recall of the replacement tire pricing committee?

A. Well, the last price list which is now in existence is dated September, 1947.

Q. So you wouldn't have had occasion to have had a meeting since then?

A. No."

(Evidence pp.7408-09)

W. M. Nelson, an employee of Firestone, stated:

"A. We have not had a pricing committee meeting -- that is, there has been no notice of the disbanding of it. But there has not been a pricing committee meeting since the publication of the last price list.

Q. When was that?

A. That was September, 1947.

Q. September 1947?

A. Yes.

Q. And there has been no meeting since that time?

A. No."

(Evidence p. 6191)

(b) Implement and Tractor Tires and Tubes

The production of pneumatic tires and tubes for farm tractors and agricultural implements is a relatively new development in the Canadian tire industry. In 1939 the total selling value of the Canadian production of tractor and implement tires and tubes was barely more than \$400,000., whilst in 1948 the total selling value was nearly \$13,000,000. The only tire companies engaged in manufacturing and selling farm tractor and implement tires and tubes to any appreciable extent have been Goodyear, Firestone, Dominion and Goodrich, the latter company starting production in 1945.

Because tire companies in Canada, especially in earlier years, did not manufacture all sizes of farm tractor and implement tires required for replacement purposes, a certain number of the tires on the industry's price lists were imported from the United States. The basis for the pricing of both domestically produced and imported farm tractor and implement tires sold by the Tire Companies in Canada has been an agreed-upon schedule of mark-ups over the prices of corresponding sizes in the United States. The following circular letter from the secretary of the Association dated July 2, 1940 shows the formula which was used at the time of the general price revision of June 26, 1940:

"The pricing committee on Canadian-made and imported farm tractor and implement tires and tubes, this morning agreed to the following schedule of mark-ups. Please consider this effective June 26th, 1940.

SCHEDULE OF MARK-UPS FOR COMPUTING CANADIAN PRODUCED AND
IMPORTED PRICES ON FARM TRACTOR TIRES

Approx. %
Increase over
Present Prices

8%	(1) A	Made in Canada First Line Tractor Tires & Tubes Canadian billing price to be $17\frac{1}{2}\%$ over Akron billing price.
No Change	B	Made in Canada Implement Tires Canadian billing price to be $17\frac{1}{2}\%$ over Akron billing price.
7.3%	(2) A	Made in Canada 2nd Line Tractor Tires - Rear Wheel Sizes Canadian billing price to be $17\frac{1}{2}\%$ over Akron billing price
15%	(3) A	Imported Sizes First Line Tractor Tires and Tubes Canadian billing prices to be 75% over Akron billing price.

14½%

B Imported Sizes Implement Tires
Canadian billing price to be 75% plus
7½% over Akron billing price.

18%

C Imported Sizes 2nd Line Tractor Tires
Canadian billing price to be 75% over
Akron billing price.

...

Detailed prices are attached."

(Exhibit 2025)

The particular "Pricing Committee" mentioned in the above letter refers to representatives of the Tire Companies most actively engaged in the farm tractor and implement tire market whose main task it was to keep an eye on the relationship between Canadian and American prices. The committee not only revised list prices as a whole but reviewed also the prices for new sizes of tires being added to the range by various companies, this being done through the medium of the Association. In this respect C. B. Cooper, then Tire Sales Manager of Goodyear, wrote to the secretary of the Association on July 5, 1939:

"Dear Mr. Hannay:

The prices suggested by Firestone for the 10/28 Ground Grip farm tractor tire and tube of \$67.00 for the casing and \$13.35 for the tube, are satisfactory to us.

Within the past few days we have received a copy of a price list issued by the Firestone Company, effective May 3, 1939. This was forwarded to us by one of our field men.

We find that the 10/28 Ground Grip farm tractor tire and tube are shown in that list at the prices above suggested. Apparently this information was not cleared through your office previously.

We want to suggest that in the future, list and dealer prices for farm tires and tubes of all types be established and cleared through the Pricing Committee in the regular way."

(Exhibit 2691)

From the time ceiling prices were imposed at the end of 1941 till the middle of 1947 the level of the industry's list prices on implement and tractor tires for replacement purposes underwent no general revision. Since corresponding prices in the U.S. had been lowered on different occasions during the same period, the gap between American and Canadian prices in many sizes had been widened considerably beyond its accustomed spread. The matter was referred to in a memorandum of April 8, 1946 from the manager of Goodyear's Commercial Tire Department to the general sales

manager of the company:

"Our present Farm Tire Price List is in need of revision because our comparison with United States prices in the following groups is out of line:

- (a) Wide Base Made in Canada Rear Tractor Tire sizes.
- (b) Farm Tractor and Implement Tires, not Made in Canada, and imported when required for replacement in Canada.

The attached survey has been made by Mr. Collins and gives all the details in this connection. For most of the Made in Canada sizes we have a price of approximately 2% over the United States, but in the case of Wide Base Tractor Tires, this is very much higher and runs as high as 40%.

This is much too high, and the reason for its being out of line is that since tire prices were frozen in January 1942, Goodyear-Akron have had two reductions in price, which we did not pick up here. You will see from page 5 of Group 'A' attached that our margins on selling price will still be satisfactory, if we reduce the price of Wide Base Farm Tractor Tires to line-up with the others which carry a mark-up of approximately 2%.

Imported Sizes:

Many changes that have occurred in the United States during the period of frozen prices have been the cause of our imported tire prices being out of line at the present time. These run anywhere from 41% to over 100% mark-up, whereas the exact percentage of laid-down-cost for importing tires of this type runs around 15%.

We would suggest a mark-up of 15, 20 or 25% to insure a margin of 25 to 35% on selling price.

We would like to discuss this briefly with you in order to have your opinion before Mr. Collins and myself go into an industry price discussion, scheduled for Wednesday, April 10th, at 10 A.M."

(Exhibit 2448A)

Due to the scarcity of tires that still existed in the U. S. however, the danger of importations was not very great at that time and the Companies decided against a price revision. The following is from the minutes of a sales managers' tire meeting held on April 29, 1946:

" . . .

FARM TIRE PRICES: Mr. Cooper pointed out that a number of Canadian farm tire prices have got out of line with U.S. prices and in some cases are so much higher than U.S. prices that there would be a real danger of imports on a considerable scale if these tires were

in plentiful supply in the U.S. He recommended that the situation be left as it is for the time being while these tires are still scarce in the U.S., but be watched carefully so that action may be taken as soon as necessary. The other interested companies concurred.

..."

(Exhibit 2228)

No change was made in replacement prices of implement and tractor tires until the summer of 1947 when Goodyear, Firestone, Dominion and Goodrich made substantial reductions in the majority of sizes of tractor rear tires, and some reductions in the prices of tractor front tires and implement tires to bring them in line with U.S. prices for similar sizes. No discussions or agreements preceding the change in prices are to be found in the minutes of tire meetings of that period. A comparison of the new prices which in each case became effective on June 2, 1947 shows them to be identical.

C. Pricing Procedures

(a) The Replacement Tire Pricing Committee

Whilst general revisions in the list prices of passenger car, bus and truck tires and tubes for replacement purposes were usually separated by appreciable time intervals, particular pricing arrangements and agreements in the industry in connection with these tires and tubes have frequently taken place during such intervals. These particular pricing arrangements related to such matters as groupings and combinations of tires and tubes, new sizes, special types or imported sizes of tires and tubes.

As in the case of general price revisions, agreements on these matters were usually arrived at through the medium of the Association, for the most part at tire meetings held in the offices of the Association or sometimes by correspondence which was relayed through the secretary of the Association.

With respect to both general price revisions and special pricing matters the task of actually working out new prices and generally keeping an eye on the relative price level of each individual size and type of tire and tube on the replacement price list was given to a group of representatives from the various Tire Companies referred to as the Replacement Tire Pricing Committee.

This committee was composed of representatives of various companies. The minutes of a sales managers' meeting of March 14, 1939 state that it shall consist of representatives of Goodyear, Firestone, Gutta Percha and Dunlop (Exhibit 2158). Apparently two particular representatives of Dunlop and Goodyear, because of their personal experience, were long the mainstay of the committee with different representatives from other companies participating from time to time.

In giving evidence about the functions of this committee, T. M. Ponton, an employee of Dunlop, who was a member of the committee for a

very long time, said:

"A. . . . that committee was given the task of handling the detail involved in rearranging the new schedule of prices as a result of discussions which took place by the Sales Managers, the pros and cons of the situation as it then existed affecting the Canadian market was discussed and if they decided that the situation in order to protect the market needed a reduction in price, they discussed the thing in a general sort of way and this committee would be given instructions to do so-and-so.

Q. You would also be acting under instructions?

A. True.

Q. You had a specific chore, you were sitting down for a definite purpose?

A. Working out the detail and then present it back to them and say there you are gentlemen.

Q. Well it would be the sort of thing that if you were instructed might be - if there was going to be a general reduction in certain classes of five percent or an increase of five percent?

A. Yes . . . or if prices had to be arranged due to ---

Q. Grouping?

A. Grouping of sizes and new sizes. Where new sizes were coming out, for instance the super-balloon, they had to adjust these prices so they would fit into the general picture, so that it was our detail to ferret these things out and present them and give reasons for it."

(Evidence pp. 7403, 04)

At another point in his evidence, Mr. Ponton referred to the manner in which the committee would be summoned:

"Q. How would you get notice of these meetings? How would you know when you were going to get together? Would you be summoned by anybody?

A. Well, it might come through the Rubber Association office, due to the arrangements that had been made at that particular meeting. For example, where the Sales Managers had discussed something and then immediately it would be, I suppose, the duty of the Secretary of the Rubber Association to record in the Minutes that the Pricing Committee would have to get together.

Q. Who would tell you that a meeting was being held, where and when?

A. It might come from two sources, from Mr. Levey, the Sales Manager, who would get it from the Rubber Association; in his absence it might come to me from the Rubber Association direct."

(Evidence p. 7407)

(b) Groupings and Combinations

A main task of the Replacement Tire Pricing Committee between the years 1938 and 1941 was the establishing of prices made necessary by the numerous new groupings or combinations of tire or tube sizes which were introduced in the industry during that period of time. A grouping of tires or tubes took place in the industry when it was found that the multiplicity of sizes in a certain type or line of tire or tube could be reduced and that two or more sizes could be replaced by one, for instance that tire sizes 450-20, 475-20 and 500-20 could be reduced to the 475-20 size.

The processes of tire and tube regroupings and the going into obsolescence of certain types and sizes of tires and tubes are natural ones which are brought about by engineering changes and the need for simplification. The arrangements of the Tire Companies went beyond the regrouping process, agreements being reached by general and sales managers on the prices of the new groups and sizes as worked out by the pricing committee.

An example of the grouping process was the grouping of certain sizes of tubes by the tire industry in the early part of 1938. On January 25 of that year a meeting of sales managers adopted new tube groupings as follows:

" . . .

Tube Groupings: For certain sizes, new tube groupings were adopted as follows:

<u>New Group</u>	<u>Sizes</u>
A 20-21	440-450-475/20) 440-450-475/21)
B-17-18	500-525/17) 475-500-525/18)
B 19-20	475-500-525/19) 500-525/20)
x B 21	500-525/21) 500/22)
x C 17	550-6 /17) SS 11)

C 18-19	550-600/18) 550-600/19)
✕ C 20	550-600/20) 600/21)
✕ D 17	650-700/17)
D 18-19	650-700/18) 650-700/19)
✕ D 20	650-700/20) 650-700/21)

✕ Indicates no change made in the contained casing sizes served.

It was left to the pricing committee to make the readjustments in prices required by the foregoing.

. . ."

(Exhibit 2178)

On February 4, 1938 the following letter was written to the Tire Companies by the secretary of the Association which gave the prices of the new tube groupings as worked out by the pricing committee, as well as the prices of certain tires:

"At a meeting of the pricing committee to-day, at which were present Messrs. Ponton, Head, Cooper and Collins, the following tire prices were approved:

	East		West	
	Dealer		Dealer	
	List	Billing	List	Billing
750-24 G.G. 6 - ply	\$55.40	\$42.94	\$58.20	\$45.11
900-18 G.G.10 - ply	91.90	71.22	98.50	74.79
1275-24 G.G.8 - ply Road Builder	143.75	111.41	150.95	116.99

NEW TUBE GROUPS

As directed by the last tire meeting, consideration was given to pricing of certain tubes made necessary by recent revision of groups. On the basis of present tube pricing it was decided that when new groupings are announced to the trade, the pricing should be as follows:

	<u>1st Line</u>	<u>2nd Line</u>	<u>3rd Line</u>	<u>Poundage Tax</u>
A 20-21	\$3.15	\$2.40	\$1.75	6¢
B 17-18	3.60	3.10	2.15 [✕]	7¢
B 19-20	3.80	3.25	2.25	8¢
C 18-19	4.55	3.90	2.95 ^{✕✕}	9¢
D 18-19	5.85	4.30	-	12¢

✕B 17-18 covers 500-525-17
475-500-525-18

. . ."

(Exhibit 2074b)

Nearly three months later, on April 27, 1938 I. G. Needles of Goodrich, who apparently had not received or had not taken note of the above letter, wrote to Mr. Hannay:

"Dear Mr. Hannay:

Some time ago there was a discussion regarding the adoption of new tube groupings

The latest advice we seem to have regarding prices indicates that this was put up to the price committee for decision, and we find no information about it. Will you kindly check this for me and let me know what the status is, so that we may have prices to release to our organization."

(Exhibit 2076)

The new tube prices were finally made effective a few days later at a sales managers' tire meeting held on May 3, 1938:

". . .

New Tube Groupings were made effective for release immediately, with the contained sizes and prices shown in the association letter of February 4th, 1938, as follows:

<u>Tube Grouping</u>	<u>Contained Sizes</u>	<u>1st Line</u>	<u>2nd Line</u>	<u>3rd Line</u>	<u>Tax</u>
A 20-21	440,450,475-20)				
	<u>440,450,475-21)</u>	\$3.15	\$2.40	\$1.75	6¢
B 17-18	500,525-17)				
	<u>475,500,525-18)</u>	3.60	3.10	2.15	7¢
B 19-20	475,500,525-19)				
	<u>500,525-20)</u>	3.80	3.25	2.25	7¢
C 18-19	550,600-18)				
	<u>550,600-19)</u>	4.55	3.90	2.95	9¢
D 18-19	650,700-18)				
	<u>650,700-19)</u>	5.85	4.30	-	12¢

". . ."

(Exhibit 2172)

At times the regroupings of certain types and sizes were so extensive that they virtually constituted a general price revision in that line of tires or tubes. Such was the case with bus and truck tires and tubes during the year 1940.

On May 9, 1940 C. B. Cooper of Goodyear wrote to all the other sales managers of Tire Companies:

"As you probably know, the industry in the United States is planning and working on a combination program for bus balloon and high pressure truck tire sizes.

In considering this program for Canada, it is our suggestion that this subject be placed on the agenda for the next sales managers meeting before definite steps are taken by any member of the industry in Canada to adopt this new program.

In line with this suggestion, we have deferred any plans on this new combination program until sales managers have had an opportunity to discuss the whole subject at a sales managers meeting.

Following such a discussion, any agreed proposed program could then be submitted to the Price Committee to work out a recommended price program that would co-incide with any agreed introductory program."
(italics supplied)

(Exhibit 2662)

This letter was followed by a decision made at a sales managers' meeting of June 4, 1940 that the pricing committee would meet on June 11 to prepare a combination program for bus-truck and high pressure tire sizes (Exhibit 2143).

On June 11, 1940 a meeting of the committee which was attended by representatives from Goodyear, Firestone, Dunlop, Goodrich and Gutta Percha (Exhibit 2142) tentatively worked out a new program which was reviewed by a subsequent meeting of sales managers (Exhibit 2136). A final meeting of the pricing committee on the matter was held on September 19, 1940 (Exhibit 2133). This meeting which was again attended by representatives from Goodyear, Firestone, Dunlop, Goodrich and Gutta Percha made a final revision of the pricing program. The recommendations of the committee were finally approved by the general managers at the following meeting held on October 3, 1940:

" . . .

Bus-Truck Tire and Tube Combinations: It was agreed that the list of bus-truck tire and tube combinations and prices, as set out in the Pricing Committee report of September 19th, with two single-size additions, should be announced to truck manufacturers on November 15th, 1940 and announced to tire dealers a week later, on November 22nd. It was agreed that to escape confusion, new bus-truck tire price-lists would have to be issued to dealers on the date of the announcement of the program. The pricing committee were instructed to prepare an Association complete list by adding the following new lists to the present list:

Bus-Truck Casings -- Combinations

<u>1st Line</u>		<u>List</u>	<u>Billing</u>
6.00-20	6-ply	\$29.25	\$22.67
6.00-20/30x5	8-ply	35.10	27.21
6.50-20	6-ply	37.85	29.34
6.50-20/32x6	8-ply	45.45	35.23
7.00-20/32x6	10-ply	54.90	42.55
7.50-18/32x7	10-ply	65.60	50.84
7.50-20/34x7	10-ply	68.00	52.70
7.50-24/38x7	10-ply	76.50	59.29
9.00-20/36x8	12-ply	117.70	91.22
9.00-24/40x8	12-ply	132.70	102.85
10.00-20/9.75-20	12-ply	127.65	98.93
10.00-20/38x9	14-ply	140.45	108.85
10.00-22/9.75-22	12-ply	134.65	104.36
10.00-24/42x9	14-ply	156.25	121.10
11.00-20/10.50-20	12-ply	148.15	114.82
11.00-20/10.50-20	14-ply	162.95	126.29
11.00-22/10.50-22	12-ply	157.85	122.34
11.00-22/10.50-22	14-ply	173.65	134.58
11.00-24/10.50-24	12-ply	164.80	127.72
11.00-24/10.50-24	14-ply	181.30	140.51
12.00-20/11.25-20	14-ply	204.70	158.65
12.00-22/11.25-22	14-ply	212.40	164.61

2nd Line

7.50-20/34x7 10-ply 59.50 47.60

Stop-Start

S.S.22 10-ply 69.50 53.87

Dealers will be rebated for stocks on hand on the day of price announcement for the single sizes shown above where the price of the new combination is lower than the old single-size price.

Old Single-sizes in new combinations take the combination price for the same sizes and plyages.

DIFFERENTIALS FOR TYPES

The following are the percentage advances over regular conventional types:

For Lug, Sure-Grip, etc.	2½%
For Dump-Truck Type	10%
For Rayon Fibre	17½%

In future price-lists shall give the same information as to sizes and plies for SS type tires as is given on price-lists of companies in the United States.

TUBES

<u>Tube Size</u>	<u>List</u>
CT-17 (600-17/650-17)	\$4.90
CT-20 (600-20/30x5)	5.85
x Single 650-20	7.00
DT-17 (700-17/750-17)	6.05
BT-20 (700-20/32x6 H.D.)	7.90
BT-24 (700-24/36x6)	8.55
ET-18 (750-18/32x7)	10.55
ET-20 (750-20/34x7)	11.05
ET-24 (750-24/38x7)	12.05
825-20	12.75
KT-20 (900-20/36x8)	14.55
KT-24 (900-24/40x8)	16.05
LT-18 (1000-18/975-18)	15.40
LT-20 (1000-20/975-20/38x9)	15.85
LT-22 (1000-22/975-22)	16.25
MT-20 (1100-20/1050-20/40x10)	18.05
MT-22 (1100-22/1050-22)	20.10
MT-24 (1100-24/1050-24/44x10)	22.30
OT-18 (1200-18/1125-18)	23.70
OT-20 (1200-20/1125-20)	25.10
OT-22 (1200-22/1125-22)	26.45
OT-24 (1200-24/1125-24)	27.80
ST-24 (1400-24/1350-24)	44.00

x On price-lists the 650-20 will be indicated as fitting 32x6 8 ply truck tires, but neither the 650-20 tube or carton is to show the 32x6 size. 32x6 second line tubes, now listed at \$5.65, will be marked on price-lists as discontinued after present stocks are exhausted.

Rebates on the above:

75¢ rebate on the 650-17 tube, which is contained in combination CT-17 (600-17/650-17)
\$2.01 rebate on the 750-17 tube, which is contained in the combination DT-17 (700-17/750-17)

Companies not adopting combination group sizes CT-17 and DT-17 will list contained single sizes at group prices.

. . ."

(Exhibit 2132)

(c) New or Special Types of Tires and Tubes

Agreements were reached from time to time in the industry on the list prices of new sizes or special types or lines of replacement tires and tubes and there was in effect an arrangement whereby one company would give the other companies advance notice before announcing any new type, quality or size of tire to the trade or the public. The following is from the minutes of a general managers' meeting of October 4, 1937:

" . . .

New Tires: It was agreed that hereafter no new type, quality or size of tire or tube shall be announced to the trade or the public by any company until after discussion at a meeting of General Managers, and not offered to the public until 30-days after such meeting. However, a change in the design or construction of existing conventional lines need not be reported for discussion.

. . . "

(Exhibit 2181)

Agreements upon prices of particular tires were sometimes made at industry meetings, as for instance the following agreement on third line prices reached at the general managers' meeting just referred to:

" . . .

Agreed that Spring booking orders may be taken and deliveries made after January 1st, 1938, for third line 600-16, four-ply casings and third line D-16 tubes as follows:

	<u>EAST</u>		<u>WEST</u>	
	<u>List</u>	<u>Billing</u>	<u>List</u>	<u>Billing</u>
600-16, 3rd Line				
4-ply Casing	\$12.95	\$10.36	\$13.60	\$10.88
D-16 3rd Line Tube	2.90	1.89	2.90	1.89

. . . "

(Exhibit 2181)

At other times the agreement was reached by correspondence through the medium of the Association as exemplified by the following circular letters to the industry from the secretary of the Association dated December 23, 1940 and December 27, 1940 respectively:

"Dear Sir:-

I have the following from Mr. J. A. Martin of the Dominion Rubber Company:

'On October 3rd at a meeting in Toronto we set a price on the 10.50-20 12-ply Cross Country tire, tube and flap. It is necessary now to set a price on the tube, in carton, because a few tubes will be ordered this way. We suggest \$5.05 per tube, in carton, net, f.o.b. factory, sales and excise taxes not included.'

Will you please let me hear from you as soon as possible in regard to the above suggested price. If all agree, it will be authorized from the Association office."

(Exhibit 2814A)

"Dear Sir: 10.50-20 12-ply Cross Country Tube

Dunlop, Dominion, Goodyear, Seiberling, Gutta Percha, Firestone and Goodrich companies have agreed to the proposal by Mr. J. A. Martin as set out in an Association letter of December 23rd as follows:

10.50-20 12-ply Cross Country, tube in carton \$5.05 per tube in carton, net f.o.b. factory, sales and excise tax not included."

(Exhibit 2814B)

Since in most instances these new or special types of tires and tubes were priced according to a certain differential over U.S. prices or again over or below the then standard types or lines, the pricing committee in most cases had the job of working out the actual prices before final approval by the senior officials of the Companies. For example, on May 16, 1947 A. U. Oakie, the Assistant to the Secretary and Manager of the Association wrote to all the Tire Companies:

"Gentlemen:

The following prices as approved by the Tire Pricing Committee have been recommended for the 1300-24, 12 ply S.G. Grader Tire:

	<u>List</u>	<u>Dealer</u>
East	\$212.25	\$164.50
West	222.90	172.75

These prices have been established by using the same markup over Akron as was used to establish the 1300-24, 8 ply tire.

Will you kindly let us have your reply at your convenience as to whether or not you approve of the above prices."

(Exhibit 2412)

This letter was followed by another one from Mr. Oakie on June 5, 1947 to the same people:

"Gentlemen:

On May 16th we wrote to all companies asking for approval of prices for the above tire which are as follows:

	<u>List</u>	<u>Dealer</u>
East	\$212.25	\$164.50
West	222.90	172.75

We have now received approval from all companies concerned and since it is no longer necessary to receive approval from Ottawa on this type of tire, these prices will become effective immediately."

(Exhibit 2417)

The manufacture and sale of white side-wall tires, which had been discontinued during the control period, is a matter which came up for discussion in the industry in the summer of 1947. The Tire Companies did not wish to reinstate these particular tires immediately upon de-control because of the crude rubber content they required and the continuing scarcity of crude. Pressure for this type of tire, however, was mounting. The subject was raised in a memorandum dated May 23, 1947 from C. B. Cooper of Goodyear to the top management of his company:

"Since the Management Meeting of May 20, I have contacted Firestone, Goodrich and Dominion, relative to the subject 'White Sidewall Tires'.

They all suggested a delaying action on the release of white sidewall tires. Firestone and Dominion suggested hoisting the release date to September 1st to dealers and if possible, with manufacturers.

I think that we should play safe and be prepared to release to manufacturers, July 1st; but to agree to a hoist of thirty to sixty days if the rest of the industry are favourable to that program.

In the meantime, also I think that we should set up Dealer and List prices through the Rubber Association and if you are agreeable, I will call Mr. Smith and ask him to have company representatives meet within the next week to set up Dealer and List prices, but not to release until authorized. (italics supplied)

. . ."

(Exhibit 2437)

On May 30, 1947 the secretary of the Association sent the following circular letter to the Tire Companies:

"SENT TO ALL TIRE COMPANY GENERAL MANAGERS AND
GENERAL SALES MANAGERS"

RE: WHITE SIDE-WALL TIRES

Dear Sir:

At the meeting of General Managers held on April 22nd, it was agreed to set July 1st as a tentative date for the release of white side-wall tires.

Since that meeting, one of the tire companies has been giving the question further consideration and has come to the conclusion that release of white side-wall tires by July 1st would be a premature move. Accordingly they have consulted informally a number of other companies, and finding them of like mind, wish to recommend for consideration by all tire companies, the following programme:-

- (1) That the release date for white side-wall tires be set back to September 1st.
- (2) That the Sales Managers meet, not earlier than July 15th, to decide what sizes are to be made with white side-walls and whether they should be wrapped or not and to recommend new replacement and equipment prices.
- (3) That the automobile manufacturers be advised that white side-wall tires will not be available prior to September 1st.

I should be grateful if you would advise me at your earliest convenience if the above programme is acceptable to your company."

(italics supplied)

(Exhibit 2524B)

On June 18, 1947 C. B. Cooper, General Sales Manager of Goodyear, wrote to other officials of the company:

"We have been advised by Mr. G. Smith of the Rubber Association in a letter dated June 9, that all companies have agreed to the suggested program on White Sidewall Tires to the effect that White Sidewall Tires will not be released to manufacturers or dealers before Sept. 1, 1947; and also that representatives of companies would meet not before July 15 to establish manufacturers' and dealers' prices.

. . ."

(Exhibit 2404)

A meeting of sales managers was held on July 8, 1947 at which the matter was discussed. The minutes obtained from the Association office record the subject in these words:

". . .

WHITE SIDE-WALL TIRES: It was reported that automobile manufacturers are anxious to secure white side-wall tires for use on automobiles on display at the Canadian National Exhibition.

The meeting recommended that white side-wall tires be released to car manufacturers prior to September 1st solely for use on vehicles to be displayed at the Canadian National Exhibition, and be billed to them after September 1st.

". . ."

(Exhibit 2206)

Handwritten notes on the same subject written by I. G. Needles of Goodrich, who was at the meeting and which were attached to the agenda of the meeting, read as follows:

". . .

White sidewall - for .X. (Exhibition) only
Suggestion put on for show cars -
Should release by that time for show cars.
Bill on or after Sept. 1.

Replacement prices 20% over black.
Pricing committee to handle
for replacement.
" equipment.

". . ."

(italics supplied)

(Exhibit 2774B)

The minutes of a general managers' meeting of July 25, 1947 contain the comment:

". . .

WHITE SIDEWALL TIRES: Recommendations approved.

(Exhibit 2205)

Identical documents in the following form were received from the files of Goodrich, Dunlop, Dominion and Goodyear:

"SUGGESTED REPLACEMENT PRICES

Reversible White Side-Walls

	<u>List Price</u>	<u>Dealer Price</u>
550-15 4 ply	22.65	17.56
6 ply	28.30	21.94
600-15 4 ply	25.45	19.73
6 ply	31.80	24.65
600-16 4 ply	25.90	20.08
6 ply	32.35	25.08
650-15 4 ply	31.10	24.11
6 ply	38.90	30.15
650-16 4 ply	31.90	24.73
6 ply	39.85	30.89
700-15 4 ply	33.60	26.04
6 ply	42.00	32.55
700-16 4 ply	34.60	26.82
6 ply	43.30	33.56
750-15 6 ply	50.35	39.03
750-16 6 ply	53.65	41.58

(Basis: 20% over black side-walls.)

Imported Tires

	<u>Tire</u>		<u>Tube</u>	
	<u>List</u>	<u>Dealer</u>	<u>List</u>	<u>Dealer</u>
<u>For Farm Tractor Service</u>				
600-9 4 ply	33.70	26.12	3.20	2.08
8 ply	50.35	39.03		
10 ply	58.60	45.42		

(Basis: Can. dealer price - Akron contract dealer price
+ 25% + Excise Tax.)

For Industrial Tractor Service - For sizes listed above add 8% sales
tax to above prices.

For Other Than Farm or Industrial Tractor Service -

	<u>List</u>	<u>Dealer</u>
600-9 4 ply	50.00	38.75
8 ply	74.45	57.70
10 ply	86.90	67.35

(Basis: Canadian dealer price = 30% on Akron selling price
plus duty, sales tax and excise tax.)

(Exhibits 2772D, 2528,
2415, 2806)

attached to the Goodrich copy was a confidential letter dated August 13, 1947 to district managers acquainting them, in order that they might be fully informed, that:

". . .

It was decided that white sidewall tires would be made and supplied to car manufacturers as original equipment on cars being shown at the Canadian National Exhibition, due to the fact that certain automobiles would be imported from the United States on white sidewall tires, and we did not want the Canadian automobile manufacturers to be at a disadvantage.

". . ."

(Exhibit 2772F)

These papers were in turn attached to what purported to be a draft sales bulletin dated August 20, 1947 under the subject "WHITE SIDEWALL TIRES" which concluded with the paragraph:

"Attached to this bulletin you will find the ultimate proposed size range, with retail and dealer net billing prices."

(Exhibit 2772A)

From the files of the Association were received consumer and dealer price lists of Dominion and Goodyear effective September 1, 1947. They listed 6 sizes of white sidewall tires and for these showed consumer prices and dealer prices the same as those appearing on the document "Suggested Replacement Prices" set out above. (Exhibits 2264G, 2264J, 2264B, 2264C)

J. I. Simpson, President of Dunlop, gave evidence in respect of Exhibit 2528 as follows:

- "Q. If you will look at the original of that document, Mr. Simpson, would you know the original of that price list? Is it a price list you had made up by your company or another company or the Rubber Association?
- A. It looks to me from where I am looking like the Rubber Association, but whether it is or not I wouldn't be prepared to say.
- Q. Well, would the prices help you?
- A. There is twenty percent difference. In those days that was the reversible white sidewall, twenty percent difference.
- Q. Would the prices come to you from the Rubber Association on those sidewalls?
- A. I think some of the members of the Association, whether it was the General Manager or the Sales Managers - these are based on cost I fancy - and an agreement was arrived at as to the

difference between what should be a fair differential between a white sidewall tire and a black sidewall tire. In other words, a tire is the same until it reaches the point of putting on the white sidewall, and then based on the cost of doing that, we arrived at what was considered a fair differential between the white and black sidewall tires. I think that is what this is dealing with there."

(Evidence pp. 7358,59)

(d) Imported Tires and Tubes

Some agreements dealing with the list prices of replacement tires and tubes concerned the sizes and types not manufactured in Canada but imported from the United States. Although imported sizes constituted only a small percentage of the Tire Companies' sales, the pricing of these sizes from time to time received the attention of the various tire meetings.

Most of the work entailed in working out Canadian list prices for imported tires and tubes before these were agreed upon by the senior officials of the Tire Companies was entrusted to representatives from various of the companies who met for the purpose of pricing such tires and tubes. The following is from the minutes of a general managers' tire meeting of December 10, 1936:

". . .

Import Tire Prices: A list of suggested new prices for imported tire sizes, which had been submitted to companies, was reviewed. It was decided that there should be further consideration given to import prices and a committee consisting of Goodyear, Dunlop, Gutta Percha and Seiberling were named to make a report.

". . ."

(Exhibit 2193)

The procedure sometimes adopted with respect to these prices was that recommendations were sent to the various Tire Companies before approval of them at a general managers' or sales managers' meeting. Thus at a sales managers' meeting held on November 25, 1938 imported tire prices, already worked out and sent out to the Tire Companies, came up for approval by the meeting:

". . .

Imported Tires: Under date of November 8th companies were sent proposals for new prices on imported tire sizes. These were approved.

". . ."

(Exhibit 2163)

The Canadian prices on imported tires and tubes were based on an agreed upon mark-up over U.S. prices which allowed for the costs of importation together with a margin of profit for the Canadian tire company.

In the fall of 1939 exchange fluctuations were apparently creating complications in respect of the pricing for the Canadian market of tires imported from the United States. The following is from a general managers' meeting of September 18, 1939:

". . .

Exchange on Imported Tires: As tires that are not made in Canada but are imported by tire companies and are now priced close to the laid-down cost, and as with the wide exchange fluctuation between Canadian and U.S. dollars to-day, sales of imported tires are liable to result in a loss; it was agreed that the rate of discount on the Canadian dollar should be added to the sale price and the rate could be controlled at the time the tires were cleared.

". . ."

Exhibit 2148)

The matter was taken up the next day, September 19, 1939 by a meeting of sales managers:

". . .

Exchange on Imported Tires: The decision of general managers was noted and to give it workable effect, it was agreed that the exchange rate to be applied on sales of imported tires and tubes shall be the rate applied by the Customs Department on the day of import entry and that such rate of exchange will be applied as an addition to the billing price. For example, if the rate was 10% on the day the goods passed customs, on \$100 billing for goods 10% or \$10.00 would be added as an additional item of charge.

". . ."

(Exhibit 2147)

The following extract from the minutes of a pricing committee meeting held on June 11, 1940 shows how a formula for calculating Canadian prices on imported tires was arrived at:

"RECOMMENDATIONS ON IMPORTED PRICES

A study of cost of importing, including 25% duty, 8% sales tax and 11% exchange and not including poundage tax, shows that the cost of importation is about 50% of the States base (distributor) price.

In order to secure a 30% gross profit on dealer price basis, the list would need to be 114% mark-up over States base cost, but as exchange is added to the price quoted, this mark-up need only be 97%, so 95% mark-up over States base price is recommended to reach Canadian dealer billing prices.

This formula will, of course, apply only to tire and tube lines where the 25% duty is applicable."

(Exhibit 2142)

A month later, after a special 10 per cent import tax and an augmented excise tax had been put in effect by the Federal budget in June 1940, new prices for imported tires and tubes were worked out by the pricing committee under a revised formula. The following is from a sales managers' meeting of July 5, 1940:

". . .

Imported Tires: The pricing committee will submit a formula for pricing imported tires and tubes and work out prices under such formula. It is estimated that these will show a mark-up of 122% over United States distributor prices. They will be marked up in the usual way and be subject to the addition of exchange at the agreed rate which is now $8\frac{1}{2}\%$.

Earth Mover tires and tubes, which are imported, are to be marked up 10% over the present list.

". . ."

(Exhibit 2139)

On July 19, 1940 W. F. Collins of Goodyear, who was a member of the committee, wrote to General as follows:

"Gentlemen:

You will find attached a copy of the prices on imported tires and tubes, worked out by the Pricing Committee.

For your information, these imported truck and bus tire and tube prices are based at approximately 122% over the distributors' prices in the United States. For Earth Mover tires and those sizes brought in for Earth Mover use, prices are based at approximately 94.6% over distributors' prices in the United States.

Owing to the recent illness of Mr. Hannay of the Rubber Association, I am taking the liberty of sending you copies of these prices which were forwarded to him a short while ago.

". . ."

(Exhibit 2663)

At the end of the same year another revision of imported prices was brought about by a change of prices in the United States. On December 4, 1940 two days after the price change in the United States, the pricing committee had already readjusted the Canadian prices on imported sizes and types. On December 5, 1940 C. B. Cooper of Goodyear wrote to the secretary of the Association with copies of his letter to all the other sales managers:

"Dear Sir:

A recent revision in the prices of some sizes of tires and tubes in the United States will make it necessary to change some of our prices for imported tires and tubes in order to maintain the ratio above

United States prices on imported tires and tubes, which has been agreed upon by the industry.

We have, therefore, as of today advised our branches to cancel present prices on imported tires and tubes and withhold billing until new authorized prices have been issued.

We would suggest that the Pricing Committee submit a new price list for imported tires and tubes using the same ratio as previously agreed upon, above the present United States prices."

(Exhibit 2714)

The day before however, on December 4, the secretary had already sent from his office the new revised prices together with the following letter addressed to each company:

"Dear Sir:-

IMPORTED TIRE PRICES

A change of tire prices in the United States on December 2nd, 1940, has necessitated a change in the Canadian prices of tires and tubes imported into Canada by tire companies.

The enclosed list and dealer billing prices have been worked out by the pricing committee, which used the regular percentage increases that have been agreed upon as necessary to take care of such import expenses as duty, sales-tax, exchange, etc.

The prices for Singer and Austin tire sizes are included on page 4, but show no advance as this had already been taken care of by the pricing committee.

Goodyear tire and tube names are used, because Mr. Collins of Goodyear had recorded the changes agreed upon by the pricing committee and the use of his sheets saves time at a period when the Association office is very busy.

The pricing committee suggest January 2nd, 1941, as the effective date. Please let me know if that date and the suggested prices are satisfactory to your Company."

(Exhibit 2657)

The prices listed were based on a mark-up over United States prices set to realize a gross profit of 30 per cent on the Canadian selling prices which were increased by an additional $8\frac{1}{2}$ per cent to cover the dollar exchange differential.

In June 1941 a meeting of sales managers of various Tire Companies decided to reduce the prices of imported tires and tubes by using a new formula over United States prices which would realize 20 per cent instead of 30 per cent on selling prices. The discussion is not reported in the

official minutes of the meeting but was recorded separately by the secretary of the Association and inserted in his minute book immediately after the minutes of a sales managers' meeting held on June 16, 1941:

"IMPORTED TIRE AND TUBE PRICES:

It was the general opinion of the meeting that imported tire and tube prices were too high. As the prices in effect were figured to realize 30% on the selling price, the meeting agreed to use 20%. The basis for arriving at a laid-down cost as previously used is the same, that is, U.S. base dealer prices.

The pricing committee was asked to figure a new price list for imported tires and tubes, not including imported farm tire and tubes.

Phoned by Mr. A. Head to Mr. Hannay on June 17th, 1941 (Discussed at meeting but not in minutes.)"

(Exhibit 2125)

Following the sales managers' decision, W. F. Collins of Goodyear, who had been requested to work out new prices that would realize 20 per cent on selling price, sent 12 copies of the revised prices to the Secretary of the Association, A. B. Hannay, with the following letter dated June 26, 1941:

"Dear Sir:-

Enclosed are the twelve copies of Imported tire and tube prices which you requested, so that a copy could be sent to all companies concerned.

The effective date has been placed at July 7th, 1941, so that other companies can have time to review them. If we do not hear from you by that date we will put them into effect and advise our organization.

Here is the basis which we used in order to realize 20% on Selling Price, that is, our laid down cost less taxes plus 25%. Why we use a laid down cost less taxes is because we charge $8\frac{1}{2}\%$ of dealer price in Canada to cover exchange, and duty and sales tax on exchange.

The base dealer price in United States is used, that is, printed dealer prices less discounts allowed off the printed dealer prices.

In percentage over U.S.A. base dealer price, they are approximately 96.0% for both tires and tubes, not including Earthmover, Farm, Motorcycle or Pneumatic and Solid Industrials.

For Earthmover, and sizes imported for Earthmover use only, the same basis is used. On account of lower duty on this type of tire the percentage over the base dealer price in United States is approximately 71% for both tires and tubes.

The attached are the only Imported tire and tube prices which we have figured. Those for Motorcycle, Farm and Pneumatic and Solid Industrials are set for the time being unless some company proposes a change."

(Exhibit 2020)

Mr. Hannay on June 27, 1941 wrote to all the Tire Companies, except General, enclosing the revised prices:

"Dear Sir:-

The June 16th meeting of tire sales managers asked the Goodyear Company to figure new prices for imported tires and tubes, that companies may find it necessary to bring in because of non-Canadian production. These prices were to show a reduction to 20% from the 30% expectation for then existing prices. Price change was not to apply to motorcycle and implement tires because these had recently been dealt with.

The enclosed prices are laid-down cost, plus 25%. Laid-down cost, less tax is used because of the charge by companies of 8½% of dealer price in Canada to cover exchange, duty and sales-tax on exchange.

July 7th has been set as the date for these new imported prices to be effective. This date has been made to give companies opportunity to review the enclosed prices.

It is desirable that each company should express its approval of these prices or any suggested change they consider should be made. Please let me hear from you."

(Exhibit 2841A)

The letter from one of the Companies dated July 7, 1941 approving those prices read:

"Gentlemen:

Attention: Mr. A. B. Hannay

New imported tire prices as attached to your letter of June 27 are quite satisfactory, and we will release them to our field organization as soon as we receive word from your office that all companies have given their approval.

We would appreciate receiving the final 'go ahead' at your earliest convenience."

(Exhibit 2022)

The evidence does not reveal any further revision of prices with respect to imported tire and tube prices before price control was imposed on December 1, 1941.

On July 3, 1947 the Association had resumed its pre-control role of circulating new prices on imported tires among the Tire Companies. On that date the following letter was sent by the assistant to the secretary of the Association to the various Tire Companies:

"Gentlemen:

We have had a request from one of the companies for a price for the 8.25-16, 6 ply imported passenger casing (black side-walls).

There was no price established for this tire, and Mr. Collins of Goodyear was good enough to work one out, which is as follows:

List	\$67.95
Dealer	\$52.66

This is computed on a basis of 30% over Akron contract dealer price.

Will you kindly advise whether or not you approve of the above price."

(Exhibit 2453B)

This letter was followed on the next day by another one which corrected the formula used in arriving at the Canadian price as set out in the previous letter:

"Gentlemen:

I wish to refer to my letter of July 3rd regarding recommended price for the 8.25-16, 6 ply imported passenger casing with black sidewalls.

I have to advise that the third paragraph of my letter regarding the basis of calculation is incorrect, and should read as follows:

Canadian dealer price was arrived at on the basis of 30% on Akron selling price of \$28.42 (includes exchange), which would give a selling price in Canada of \$40.60 plus duty, sales tax and excise tax, to give a Canadian dealer price of \$52.66."

(Exhibit 2407B)

D. Terms to Dealers

(a) General

Tire and tube dealers throughout Canada purchase their requirements of tires and tubes from their supplying tire companies or their distributors on the basis of "Dealer Billing" prices less certain discounts, allowances and bonuses set by the Tire Companies which have the effect of reducing the net cost to the dealers in some cases substantially below the invoice price.

These discounts, allowances and bonuses, as well as the other terms and conditions of sale applying to the purchase of tires and tubes by dealers are set out in or are supplementary to written contracts issued by the Tire Companies and called "Dealer Franchise and Quantity Purchase Contracts" or a similar name. Under the terms of this contract, which is signed by the dealer and by the supplying tire company or its distributor, the dealer agrees to buy and the company or distributor agrees to sell to the dealer tires and tubes at the company's regular prices and terms.

Any dealer wishing to be supplied with a tire company's products for resale to the public accepts a dealer contract and identifies himself as a dealer for that company's tires and tubes. For that purpose he ordinarily erects on his premises, signs and advertising displays of the company which remain the property of the company and can be removed by the latter at the termination of the contract. Termination of the contract may arise from its cancellation by either party usually by ten days prior written notice from one party to the other.

A comparison of the dealer contracts and supplementary terms issued by the Tire Companies shows that whilst dissimilar in appearance and in some of the legal phraseology used, and whilst some of the contracts have been more extensive and detailed with respect to certain conditions of sale, the provisions affecting the prices to the dealers such as those relating to quantity purchase and other allowances, terms of payment and transportation charges are substantially uniform.

The "quantity purchase allowance", also known as "service consideration" or "bonus for volume", is a reward in the form of merchandise credit which is granted to the dealer on his purchases of tires and tubes during the "tire year" which generally runs from November 1 to October 31 of the year following. This allowance which is one of the most important items in the dealer contract, is calculated on a graduated basis depending upon the dealer's purchases during the tire year. As will be seen later on in this section, quantity purchase allowances have been the object of discussions and agreements among the Tire Companies.

(b) Sales and Shipping Terms

The sales and shipping terms used in sales of tires and tubes to dealers have been uniform by tacit or express agreement among the Tire Companies. In general the

shipping terms have been freight prepayment on shipments of 100 pounds or more, otherwise F.O.B. point of shipment or prepay point. If the goods received by the dealer were paid for on or before the tenth of the month following the invoice date, a cash discount of 2 per cent was allowed the dealer.

An exception to these terms of payment was made in the case of orders booked in advance by the Tire Companies for future delivery. "Booking" is a sales campaign by the Tire Companies which usually took place in the fall for delivery in the spring before the heavy consumer demand for tires and tubes set in. The booking programs usually started toward the end of October and lasted till the end of January. Deliveries of orders placed during this period would start at the beginning of January and last till the end of April. Under this booking program cash discounts were allowed on payments made on or before May 10 for the dealers situated in Zone A, and on or before June 10 for the dealers situated in Zone B, the latter zone comprising the areas where the spring season generally makes a later arrival such as the Maritime Provinces, the Quebec City region, the territory north of North Bay, as well as the Winnipeg, Regina, Saskatoon and Calgary regions. If payment for the goods was made by the dealer before the due date a prepayment interest rate of 6 per cent per annum was deducted from the invoice.

The arrival of the booking season, which meant the beginning of another tire year, was usually preceded by agreements made at tire meetings as to the dates and terms to be in effect with respect to the booking program. The following is from a general sales managers' meeting of August 12, 1937:

". . .

Booking: It was recommended that booking for Spring delivery should open on October 18th, 1937, and close January 31st, 1938, delivery and discount dates and other booking terms to be the same as last year.

". . ."

(Exhibit 2184)

The sales managers' recommendation was agreed to at a meeting of general managers held on August 25, 1937:

". . .

Booking: Agreed that booking for Spring delivery will open on October 18, 1937, and close January 31st, 1938, the prices to be those in effect on January 1st, 1938, delivery and discount dates and other booking terms to be the same as last year, when the prepayment-rate was 6% per annum; the bonus year from November 1st to October 31st; prices subject to change because of new taxes, lock-outs, extreme exchange fluctuations, civil commotion or act of war increasing the delivery cost of goods; booking deliveries to begin January 1st and end April 30th; the cash discount for placing orders to terminate on May 10th for Zone 'A' and on June 10th for Zone 'B'.

". . ."

(Exhibit 2183)

A similar agreement was made before the next booking season on August 29, 1938 at another meeting of general managers (Exhibit 2165).

A slight change in the bonus structure was proposed at a sales managers' meeting held in the following year when the booking program was again discussed and decided upon. The following is an excerpt from the minutes of that meeting held on October 5, 1939:

"Booking: A proposal that there shall be booking this year was adopted by a vote of five to three, Dominion, Good-year, General, Cutta Percha and Goodrich voting affirmative and Firestone, Dunlop and Seiberling voting negative.

. . .

It was agreed that the bonus year shall be as in the past, the twelve months period ending November 1st, and the bonus payment rates shall be those now in effect. It was suggested, however, that companies give consideration to changing the provisions for minimum bonusing. This is now 2% on purchases from \$500 to \$999. With the view of assisting small accounts, it was suggested that the bonus of 2% should be paid on all purchases made by accounts whose annual purchases do not exceed \$1,000 a year. Companies will write the Association office regarding this suggestion.

. . ."

(Exhibit 2146)

The evidence does not indicate that the proposed change in the minimum bonus rate was adopted.

With respect to the bonus for volume scale the meeting recommended that the general managers reaffirm the understanding with respect to taking on new dealers:

" . . .

Soliciting Accounts: Recommended that General Managers repeat to their company branches their telegram of May 2nd, 1939, that 'No new dealers to be taken except at regular discounts and earned bonus for volume.' "

(Exhibit 2146)

The agreements on dates and terms for booking as well as the agreement concerning the solicitation of new accounts were again referred to in the following year at a sales managers' meeting held on October 17, 1940:

" . . .

Booking: The date and terms for booking having been set by the General Managers, it was agreed that there should be reaffirmation by companies to their branches of the telegram of General Managers that 'no new dealers are to be taken except at regular discounts and earned bonus for volume' set out on May 2nd, 1939 and again on October 5th, 1939.

. . . "

(Exhibit 2130)

On the eve of controls a sales managers' meeting held on October 1, 1941 reaffirmed the industry understandings with respect to the booking program:

" . . .

Dates and Terms for Booking: Agreed that booking for Spring delivery will open on October 21st, 1941, and close January 31st, 1942, the prices to be those in effect on the date of shipment, regardless of delay in shipment for any cause; delivery and discount dates and other booking terms to be the same as last year, when the prepayment-rate was 6% per annum; the bonus year from November 1st to October 31st; prices subject to change because of new taxes, lock-outs, extreme fluctuations, civil commotion or act of war increasing the delivery cost of goods; booking deliveries to begin January 1st and end April 30th; the Cash discount for placing orders to terminate on May 10th for Zone 'A' and on June 10th for Zone 'B'. Freight will be prepaid on shipments of one hundred pounds and over.

In order to stabilize the industry, no new tire dealers are to be taken by any company except at regular discounts and bonus for volume.

. . . "

(Exhibit 2122)

The number and location of branch and warehouse points affected the cost of distributing tires and tubes, not only from the standpoint of freight charges, since freight would be absorbed to such points, but to a greater degree from the standpoint of the cost of maintaining and managing inventories at such points by the payment of commissions or otherwise. In addition to these matters of interest it was recognized that for any company to have a branch or warehouse in a locality gave it a competitive advantage, in the service it could give its customers, over other companies having no such facilities there. Because of these factors the location of warehouse points was a matter of common concern among the Tire Companies.

In pre-control years the "Branch and Warehouse" list apparently stood at 19 branch and 23 warehouse points. During part of the control period the inclusion of any place on the list, because it increased distribution costs and tended to scatter the inventory of available tires and tubes, was subject to approval by the Rubber Control authorities. The places that were on the list on August 15, 1946 are indicated in a memorandum of that date from W. M. Nelson of Firestone's Tire Sales Department to the general sales manager of the company:

"Rubber Association Decisions and Agreements of December, 1934, established the following Branch and Warehouse Points:-

Branch Points (19)

Sydney	Ottawa	Kitchener	Edmonton
Halifax	Toronto	Winnipeg	Lethbridge
St. John	Hamilton	Regina	Vancouver
Quebec	London	Saskatoon	Victoria
Montreal	Windsor	Calgary	

Warehouses (23)

Charlottetown	Timmins	Prince Albert
Truro	Owen Sound	Peace River (?)
Yarmouth	Chatham	Grand Prairie
Moncton	Fort William	Nanaimo
Sherbrooke	Brandon	Nelson
Riviere du Loup	Yorkton	Vernon
Kingston	Moose Jaw	North Bay
N. Battleford	Swift Current	

Rubber Controller's Letters of August, 1944 and June, 1945:--

Warehouse Additions (13)

Three Rivers	St. Catharines	Penticton
Chicoutimi	Kirkland Lake	Kamloops
Belleville	Noranda	Prince George
Brantford	Rosstown	Trail
Peterboro		

Moncton now listed as a branch point instead of a warehouse.

We are now established in 11 branches and have 41 warehouses.

On Goodyear's latest price list, they show 10 branch points and 2 distributors and 30 warehouses."

(Exhibit 2604)

For the reasons above mentioned the creation of new warehouse points was a matter of discussion and joint action by the Tire Companies. The following is from the minutes of a sales managers' meeting of March 13, 1947:

". . .

WAREHOUSE POINTS: Hanover, Ontario, Barrie, Ontario, Val d'Or, Quebec, and Malartic, Quebec, were recommended for inclusion in the industry's list of warehouse points, but after some discussion the companies sponsoring the inclusion of these points withdrew their recommendations.

". . ."

(Exhibit 2214)

Warehouse points were again discussed at a sales managers' meeting held on May 13, 1947 along with consigned stocks:

". . .

CONSIGNED STOCKS: The suggestion was put forward that the industry should cease placing stocks on consignment.

In the discussion which followed, several strong arguments in favour of consigned stocks were developed. It was pointed out that

few tire dealers had sufficient capital to carry an adequate stock of a complete range of tires on their own account, and that accordingly they would be handicapped in competition with Atlas dealers unless aided by consigned stocks. Furthermore, it was stated that, if properly controlled, consigned stocks provided a most economical method of distribution.

It was then suggested as a compromise that only passenger casings be stocked on a consignment basis. The majority of the companies opposed any hard and fast rule to this effect, although they preferred not to ship truck and farm service casings or tubes of any type on consignment, and discouraged such shipments.

. . .

WAREHOUSE POINTS: The following points were recommended for inclusion in the industry's list of Warehouse Points:

Tisdale, Saskatchewan
Red Deer, Alberta

This recommendation precipitated a lengthy discussion of the warehousing problem. The consensus of opinion was that indiscriminate spreading of warehouse points all over the country should be combatted because it leads to increased distribution costs.

. . .

The recommendation to include Tisdale, Sask., and Red Deer, Alta., in the industry's list of warehouse points was finally withdrawn.

The listing of Noranda-Rouyn was extended to read Noranda-Rouyn-Malartic with the understanding that a company should not have more than one warehouse in this area.

. . ."

(Exhibit 2208)

Generally speaking the matter of freight prepayment is not one which appears to have required much attention on the part of the industry although on some occasions the understanding on terms of shipments had to be clarified with respect to certain particular customers or areas. The following is a letter written on December 20, 1938 to the secretary of the Association by C. B. Cooper who was then Goodyear's Tire Sales Manager, with copies to the sales managers of the other Tire Companies,

"We would like to recommend that companies be authorized to prepay freight shipments on tires and tubes of 100 pounds or more to logging companies in British Columbia, whether the shipment be made direct from a company branch, distributor or warehouse or from a dealer.

We understand that one rubber company is giving dealer terms to

one of the large logging companies on the Island. Another company has called this office suggesting that some action be taken to place their dealers in a competitive position on shipments to logging companies as it is not their desire to offer dealer terms to logging companies.

We believe that the adoption of the above recommendation will help to clarify an apparent present dissatisfaction with some companies that they are not in a position to be competitive on logging company business."

(Exhibit 2696)

On December 28, 1938 A. Head, Manager of Gutta Percha's Tire Division, commented on Mr. Cooper's suggestion in a letter to the secretary:

"We have a copy of Mr. C. B. Cooper's letter to you dated December 20th regarding shipment to Logging Companies on dealer basis, paying bonus and freight.

It would be a simple matter to agree to this ruling, but it would not be constructive. We would prefer to have the practice of allowing bonus to Logging Companies and prepaying freight discontinued and, to this end, we would suggest that each Company should instruct its representative at Vancouver to attend a meeting, which could be arranged for this purpose. Failing to reach a satisfactory agreement, we would be pleased to support Mr. Cooper's recommendation as, in this way, every Company would be operating on the same basis."

(Exhibit 2705)

The suggestion was subsequently rejected at a sales managers' meeting held on January 26, 1939:

". . .

Logging Tire Freight Payment: Agreed that Vancouver and Victoria branches and company distributors will be instructed that tire shipments from tire company branches or distributors will not be prepaid; and that if a dealer elects to pay such local freight charges, he is not to be reimbursed therefore.

". . ."

(Exhibit 2159)

Freight shipments to the Yukon Territory were another matter which required the attention of the Tire Companies in order to arrive at uniform shipping terms. On December 22, 1938 R. W. Richards, who then was General Sales Manager of Goodyear, wrote to the secretary of the Association:

"As part of the agenda for the next Sales Managers' meeting will you be so kind as to introduce the following subject which is an extract from a letter just received from our Vancouver Manager.

'In the past there has been a peculiar situation in regard to 100 lb shipments being prepaid to dealers. According to our instructions this is effective any place in Canada. The next question is whether the Yukon Territory is part of Canada or not.

I would suggest at your next rubber meeting we clarify this freight item to the Yukon and make it a ruling that all tire shipments of 100 lbs or more for the Yukon be prepaid to Whitehorse only. This will be the first port of entry and prepaid shipments will not be so expensive as shipping them to Dawson and Mayo as we have been doing in the past.' "

(Exhibit 2090)

At the meeting held on January 26, 1939 the sales managers agreed to prepay shipments to the Yukon as far as Prince Rupert (Exhibit 2159). When it was subsequently brought to their attention that the same freight rates applied on shipments from Vancouver to Dawson City as those from Prince Rupert (Exhibit 2700) the prepay point was changed again to Vancouver at a sales managers' meeting held on July 21, 1939 (Exhibit 2149) and this was reaffirmed at a similar meeting held on May 27, 1946:

". . .

SHIPMENTS TO YUKON: Agreed that on shipments of over 100 lbs. to the Yukon, the terms shall be, f.o.b. tire plant, freight allowed to Vancouver.

". . ."

(Exhibit 2226)

On another occasion the question of partial shipments on genuine orders of 100 pounds or more came up for discussion. The matter was dealt with at a sales managers' meeting held on June 6, 1944:

". . .

Prepaid Shipments: One company raised the question of whether shipments of less than 100 lbs. which represent partial shipment of a genuine order for more than 100 lbs. should be sent freight prepaid or freight collect.

It was generally agreed that the industry understanding is that shipments of less than 100 lbs. should be sent freight collect, but the meeting was fairly evenly divided as to how this understanding would affect partial shipments of orders which would qualify for prepayment of freight if shipped in full. The consensus of opinion was that the matter was of little importance and it was agreed that companies may carry on with their present practices.

". . ."

(Exhibit 2245)

Terms of payment such as amount of and time limit for cash discounts were also matters for discussion at tire meetings. It was recognized amongst the Tire Companies that the granting of higher cash discounts or even the extension of the time limit in which cash discounts were allowed by an individual company were competitive factors. The industry understandings relating to terms of payments were therefore reaffirmed from time to time at meetings and through correspondence.

The reasons for the Tire Companies' interest in the maintenance of such standard payment terms are shown in the minutes of a meeting of treasurers and general credit managers of various tire companies held on October 22, 1945:

"CASH DISCOUNTS: Mr. Armstrong (Goodrich) reported that a survey of the cash discount situation made by his company revealed the granting of cash discounts allowed after the 10th proximo, is being used quite freely as a competitive weapon. He felt strongly that this practice should be checked before it goes too far, not only because of the danger of the present industry agreement breaking down altogether, but also because it is costing the industry a considerable sum of money. He emphasized that he was not referring to the fact that all companies, including his own, occasionally allow the discount on payments made after the 10th in a few non-recurring cases where the dealer has a legitimate excuse for late payment. He was referring to cases where the discount was being deliberately and continuously used as a favour or hidden discount to give an unfair advantage to key dealers, or to win dealers away from a competitor. He stated for example, that certain companies are habitually allowing the discount on payments up to the 20th prox. in British Columbia, and that his company had lost an important account by refusing to do likewise.

He suggested that the only real solution of the problem was to discontinue the granting of cash discounts on sales of tires, tubes and accessories altogether, as soon as permission to do so could be obtained from the Wartime Prices and Trade Board. He indicated that sales departments might have some doubts as to the advisability of doing so, but pointed out that in spite of doubts, cash discounts on rubber footwear had been abolished several years ago without any unfavourable effect on collections. In support of his suggestion, he read a letter from Mr. M. O. Simpson of Dominion which also recommended abolition of cash discount on tires etc. as soon as possible and confirmed that elimination of the discount on footwear had worked well.

. . .

The representatives of both Dominion and Goodrich stated that they were prepared to vote immediately on behalf of their companies in favour of a recommendation that immediate steps be taken to secure

permission from the Wartime Prices & Trade Board to eliminate cash discounts on tires, tubes, etc. at once. The representatives of the other companies indicated that they wished to make a further check into the situation before casting a vote, but would notify the secretary of their attitude as soon as possible. It was agreed that any recommendation made by the treasurers and general credit managers would be submitted first to the sales managers then to general managers for consideration.

In the meantime, and until such time as cash discounts are eliminated, it was resolved that:

'All companies give immediate consideration to strict enforcement of a policy that cash discounts be allowed only on payments made on or before the 10th day of the month following the invoice with a time allowance of 5 days, i.e., to the 15th for actual receipt of remittances.'

..."

(Exhibit 2238)

The above resolution was sanctioned at a meeting of general managers held on November 23, 1945:

"...

CASH DISCOUNTS:

Consideration was given to a proposal made by general credit managers at a meeting of October 22nd, 1945, that the W.P.T.B. be approached for permission to discontinue cash discounts on tire sales, and also to a definite recommendation that all companies enforce cash discount terms strictly, thus eliminating the use of cash discount as a competitive weapon. A suggestion by one company that the present 2% rate is too low to ensure prompt payment and should be raised to 5% was also discussed.

The meeting agreed that the question of eliminating cash discount should be shelved until such time as the whole matter of terms of sale to dealers may be considered with a view to revision. At that time consideration will be given to a proposal that the cash discount be eliminated on pay-as-sold sales, and raised to 5% on cash sales.

The meeting unanimously agreed on strict enforcement of a policy designed to eliminate use of the cash discount as a competitive weapon, as set forth in a resolution passed at the general credit managers meeting of October 22nd.

..."

(Exhibit 2236)

The industry did not accede to the proposals to change the cash discount and at the time of this investigation the same terms of payment in this respect which had been in effect prior to and during the control

period were still used by the industry. The foregoing documents are not cited because of their references to a joint application to the Wartime Prices and Trade Board, of course, but in order to show the significance of cash discounts in a uniform price structure.

(c) Bonuses and Other Allowances

During a period going back for some years before the war and extending up to the fall of 1947 the allowances granted by the Tire Companies to their dealers took the form of two types of quantity purchase allowances, a general allowance which was based on the dealer's total purchases of tires and tubes during a given year, which was usually the "tire year" running from November 1 to October 31 and a special or additional allowance which was based on the dealer's purchases of certain tires including bus, truck, and implement and tractor tires and tubes but excluding passenger tires and tubes.

Both of these allowances which were graduated according to the invoice total of the year's purchases, were remitted to the dealer in the form of merchandise credit at the end of the tire year. The scales of allowances in effect during that period were as follows:

General Allowance

<u>Purchases</u>			<u>Bonus Rate</u>
\$	500	to \$ 999	2%
	1,000	to 1,999	3%
	2,000	to 3,999	4%
	4,000	to 5,999	5%
	6,000	to 7,999	6%
	8,000	to 9,999	7%
	10,000	to 11,999	7½%
	12,000	to 13,999	8%
	14,000	to 15,999	8½%
	16,000	to 17,999	9%
	18,000	to 19,999	9½%
	20,000	and over	10%

Additional Allowance

<u>Purchases</u>			<u>Bonus Rate</u>
\$	750	to 1,999	3%
	2,000	to 3,499	3½%
	3,500	to 4,999	4%
	5,000	to 6,999	4½%
	7,000	to 9,999	5%
	10,000	to 14,999	5½%
	15,000	and over	6%

These scales of allowances were part of the Companies' dealer contracts, appearing on the face of the contract or being incorporated by reference.

The general allowance prior to the fall of 1947, was based on the total invoice value of all passenger, truck, bus, implement and tractor tires and tubes, as well as of certain miscellaneous tire accessory and repair material items such as cement, gums, repair kits, tire flaps, etc. purchased by the dealer from his supplying tire company or distributor during the tire year. In the fall of 1947 the allowance on tire accessory and repair material items was discontinued, and the discussions among certain of the Tire Companies leading up to this discontinuance are described in Chapter 2 of Part IV of this Report. That these allowances were subjects of agreement is indicated by correspondence and by understandings on complementary matters. That the general allowance did not apply to tires put out on adjustments was reaffirmed at a general sales managers' meeting held on October 13, 1938:

" . . .

Volume Bonus: It was reaffirmed that volume bonus does not apply to tires put out on adjustments and it was agreed that this should be set out in the terms of company contracts with dealers.

. . . "

(Exhibit 2164)

The additional allowance as already noted was based on the total invoice value of the dealer's purchases of bus, truck and certain other tires and tubes excluding passenger tires and tubes. Referring, for example, to the preceding scales of bonuses, if a dealer's purchases of tires and tubes from the same company had amounted to \$15,000 for passenger car tires and tubes and \$5,000 for bus and truck tires and tubes, the dealer under the terms of his contract would be entitled to a general allowance of 10% on \$20,000, plus an additional allowance of $4\frac{1}{2}\%$ on \$5,000.

Originally the additional allowance was based on the dealer's purchases of truck and bus types of tires and tubes only, but with the increasing demand for implement and tractor tires and tubes the latter were finally included with the former, for purposes of computing this additional allowance. The agreement on this matter is recorded in the minutes of a general sales managers' meeting held on March 10, 1937:

" . . .

Truck Tire Bonus: Agreed that purchases of farm tractor and implement tires shall be included for the special truck tire bonus.

. . . "

(Exhibit 2189)

In computing these two types of volume allowances on the dealer's invoice figures the Tire Companies were paying an allowance on sales and excise taxes and were therefore not basing their allowance grants on their net recovery. To change the method of computation so that the allowances would have been calculated on the basis of dealer billing prices less taxes, however, would have meant in effect a reduction in the allowance

scales. The matter was raised by I. G. Needles of Goodrich in a letter to the other Tire Companies dated January 14, 1941:

"Reviewing Profit and Loss Statements during the last few days, I noticed something that seems to me to be of growing importance.

Due to the fact that we include Sales and Excise Tax in our Billing Prices, and it appears that this Tax is now running in the neighbourhood of 12% of Dealer Billing Prices, it might be worthwhile to investigate how much it is costing us to pay our various commissions, bonuses, cash discounts, etc., on the tax which is included in the List Price.

If the above percentage is correct, then on \$1,000,000 Dealer Billing volume we pay \$120,000 tax. These various commissions might amount to around 10 or 12%, and we are therefore bearing a cost of \$12,000 or \$14,000 out of every \$1,000,000 sales volume, in the form of commission application on taxes, for which we receive no return.

To put it another way, applying these various commissions, bonuses, etc. on Sales and Excise Tax included in the total billing accounts for possibly 1-2/10 to 1-1/2% extra cost.

The question I would like to ask, and perhaps we could discuss it at our next meeting is -- Could we revise our billing procedure so that we would bill dealers on a net billing price, and then add the Sales and Excise Tax to that price, bringing us the same revenue, but setting up the tax separately on the billing.

On that basis we could then leave our list prices set up on the same relationship they now are, and make our changes in price at any time on such a basis that Dealer Billing could show the tax separately. If we were to do this, and eliminate these items from our billing, it might represent quite a considerable reduction in dealer commissions, bonuses, etc., for a good many of us, and I think it is worthy of serious consideration."

(Exhibit 2651)

As will be seen later on in this section the method of calculating the dealer's bonus for volume was finally changed along the lines suggested in the above letter when the whole dealer bonus structure was revised in the fall of 1947.

Granting an allowance for volume on the basis of billing prices also meant in some cases paying an allowance on a figure which did not represent the dealer's true list cost. As will be seen in a subsequent section, an agreement existed among the Tire Companies that certain public bus transportation operators were to be granted a discount of 10 per cent from Dealer Billing prices on their requirements of tires and tubes. Tire dealers were compensated for these sales,

being reimbursed the full amount of the discount by the Tire Companies upon proof of sale. The basis of calculating dealers' allowances for volume in these cases was made uniform at a sales managers' meeting of May 10, 1945:

" . . .

BONUS FOR VOLUME ON LISTED BUS COMPANIES' PURCHASES: In order to ensure uniformity in handling bonus for volume payments to dealers on listed bus companies' purchases it was agreed that effective June 1st, 1945, the bonus shall be based on the net cost to the dealer, as in the following illustration:-

Dealer Billing Price	\$100.00
Credit to dealer at 10%	<u>10.00</u>
Net cost to dealer	90.00
Bonus at maximum rate of 16%	14.40

Similarly, the cash discount will be based on the net cost to the dealer.

. . ."

(Exhibit 2241)

The whole quantity purchase allowance scale, which had been the subject of sporadic discussions in pre-control years secured the Tire Companies' sustained attention toward the end of 1945. The following is from a sales managers' meeting held on October 29, 1945:

" . . .

PRICE AND BONUS STRUCTURE:

Goodyear expressed the opinion that the volume for bonus scale could be revised to the industry's advantage and suggested that a committee be set up to study the price and volume for bonus structure and make recommendations for consideration by (1) Sales Manager and (2) General Managers, to be put into effect when price control is relaxed.

The meeting agreed on the need for such a step but felt that all companies would wish to participate in the study. It was agreed, therefore on conclusion of the regular agenda of the next meeting of tire sales managers the remainder of the day would be devoted entirely to consideration of this problem.

. . ."

(italics supplied)

(Exhibit 2237)

One main reason for the proposed revision in the allowance scale was the large increase in the purchase of tires and tubes by many dealers throughout the country and especially the trend in certain areas toward more and more tire business being concentrated in the hands of a few super-dealers. These reasons are elaborated in a letter sent by I. G. Needles of Goodrich to the various district managers of his company

after the sales managers' meeting of October 29. The letter, dated November 1, 1945 reads in part:

". . .

The very large total dollar volumes of business which are developing as a result of the trend toward releasing more merchandise has brought a new phase into one of our sales programs.

Dealers who might normally have earned average bonuses of 3% to 5% may now earn 5 to 10%. The cost of bonus for volume, therefore, may run, for some companies, from an average of 3 to 5% up into 7%.

There is also at the same time under tire ration regulations a trend toward the concentration of business in the hands of a few large dealers where maximum bonuses are earned on a much larger proportion that we have ever experienced before and also there may continue to be a trend toward concentration of this type of volume during several post-war years.

Consequently, on various occasions the subject of bonus for volume rate and quantity purchased amount has been touched upon lightly in discussions, but never with any definite purpose to set up some thinking regarding the application of some new program.

I would like to have you do some thinking on this subject, pretty much on your own, without consulting your staff or salesmen and give me any suggestions or recommendations you can make.

Among the things that I think should be advanced and which I present for your consideration are:

1. The existence of a bonus for volume program that gives a high preference in purchase price to an account of the 20,000 group as against another account in the 5,000 group, creates a disparity which inevitably must be equalized.

". . .

My thinking is then, that the maximum bonus on passenger tires ought to be about 5 instead of 10% and perhaps apply on a slightly lower dollar volume and the bonus for volume on truck tires should perhaps be a maximum of 7-1/2% instead of 10% and also apply on a slightly smaller volume.

2. Other sales policies. While the principal purpose of this letter is to inquire regarding your viewpoint on the proposed bonus for volume schedule which will be more intelligent and afford a strong resale program, there may be other points which you wish to discuss or suggest in setting up and formulating any new sales policy that may be discussed.

(Exhibit 2775A)

Mr. Needles wrote another letter to the same parties on November 2, 1945:

"The following paragraph was omitted from my letter of November 1st written on sales programs and policies:

'So will you quietly and on your own do some pretty careful thinking on the kind of a sales program and pricing and bonus structure that you would like to see set up in the post-war period and let me have your recommendations not later than November 26th.

. . .

You will understand, of course, that none of these programs can be put into effect, with the possible exception of change in warehousing commission arrangement which does not come under Prices & Trade Board regulations, until the regulations are relaxed sufficiently to permit it or are entirely removed. When this may happen is a question we cannot answer although it may come any time during the near future or surely sometime in 1946.

It may be that our thinking cannot be utilized to take effect until Nov. 1st 1946, or even then, but the point is that the members of the Industry are interested in and ready to talk about the post-war sales programs now. . . . "

(italics supplied)

(Exhibit 2775B)

The discussion on the proposed revision of the quantity allowance structure at the following sales managers' meeting held on December 3, 1945 is recorded in the minutes in the following terms:

". . .

PRICE & BONUS STRUCTURE: After some preliminary discussion it was agreed that at the present time the future holds too many uncertainties to permit a revised price and bonus structure of any practical value to be laid down, but that all companies should keep the necessity of a revision in mind and be prepared to take an active part in drafting a suitable program when the appropriate time comes."

(Exhibit 2235)

Although no further discussions on the quantity allowance structure are recorded in the minutes of the various tire meetings from the end of the year 1945 until the beginning of the year 1947, further study was given to the revision during that time by Goodrich and Goodyear.

On January 11, 1946 a Goodrich official wrote to the company's Montreal branch manager referring to Mr. Needles' earlier letters:

"You will recall correspondence from Mr. Needles in reference to our bonus program as a company as well as an industry.

Mr. Needles intends to discuss this matter of bonus with the other companies and requires a figure that shows what we have paid in bonus against passenger tire volume, truck tire volume and accessories.

By getting this dollar figure, for instance, on passenger tires we can then work out to a percentage figure by checking this against our total passenger tire volume.

The thought we had in mind, of course, is that our present Schedule 'A' might be tailored to some extent and our present practice of allowing bonus on certain accessories could possibly be eliminated entirely.

. . .

Will you set someone at this job just as soon as possible as we require these figures for a Rubber Association Meeting in the very near future."

(Exhibit 2781C)

Mr. Needles' study of the quantity allowance structure was the subject of some discussion between the latter and C. B. Cooper who was then Assistant General Sales Manager of Goodyear. In a long memorandum to the top management of his company dated March 25, 1946 Mr. Cooper reported on this discussion:

"As you know, I recently spent some time with Mr. Needles at his request, to review possible changes in the bonus schedule. We also had some discussion on the price situation and trade discounts as affecting tires and tubes.

The thought back of our discussion on the bonus schedule was that the present bonus scale tends to build up large dealers and place small dealers within the range of high bonus large dealers, in a non-competitive position.

We must remember that our present bonus schedule was established on November 1st, 1934. To the best of my knowledge it has not been changed since that date. . . ."

After giving figures showing the increase in the number of large dealers receiving bigger bonuses from the company, the memorandum went on:

"One of the most dangerous features of the rapid growth of large dealers is the attitude of these dealers who have tasted big profits. They are not going to give them up without a fight.

. . .

Out of our discussion came the following suggestion. With some changes, it follows a study that was submitted to me by Mr. Needles.

The suggestion is, first, that the trade discount be increased from 22 1/2% to 27 1/2% for truck tires and on passenger tires from 22 1/2% to 25%. Secondly, that the maximum bonus on passenger tires be reduced from 10% to 7% and that the maximum bonus on truck tires be reduced from 10/6% to 10%.

Here is the way that program would line up:

PASSENGER TIRES

	<u>Present</u>		<u>Proposed</u>
	100		100
Less 22 1/2%	77.5	Less 25%	75
Less 10%	69.75	Less 7%	69.75

You will see from the above that our net return from the maximum bonus dealer would be the same under the proposed plan as at present.

Here is the way it would work out on truck tires:

TRUCK TIRES

	<u>Present</u>		<u>Proposed</u>
	100		100
Less 22 1/2%	77.50	Less 27 1/2%	72.5
Less 10/6%	65.10	Less 10%	65.25

In the case of truck tires, our return would be slightly higher.

...

Several things could be done with this type of program. For example, we could either use the new trade discounts for regular billings, as at present, or we could hold to today's trade discounts of 22 1/2% and add the additional trade discount at the end of the year, plus bonus on the new scale after the 5% and 2% had been deducted.

For passenger tires, we could allow a regular trade discount of 22 1/2% plus 2% at the end of the year, plus bonus figured on the new scale. In other words, using this idea we would have a special annual trade discount given at the end of the year, as well as the bonus under the new scale.

One of the advantages of setting up a new proposed bonus scale or a combined new trade discount and bonus scale, would be that as a list price is increased, our net return would also proportionately increase and the dealer's buying program would not change although his discounts naturally would give him a greater dollar return.

...

Taxes

We had some discussion about the matter of taxes. I believe it is time that sales tax and excise tax be shown as separate items on our lists, if the Government will permit us to do that. At the present time we are paying bonus on our dealer billing level, which means we are paying bonus on sales and excise taxes.

If sales and excise tax could be deducted, we would save about 1% on our dealer billing level, in bonus payments, at least according to the way we calculated this item.

..."

(Exhibit 2424)

Although the revision of the quantity allowance schedule adopted by the tire industry in the fall of 1947 did not follow the program outlined above in its details, the main features of that new proposed program such as changes in the rate of the allowance scale, the introduction of an additional dealer's discount or allowance, and the subtraction of taxes from dealers' purchases before the computation of the quantity allowances were all put into effect by the tire industry after the suspension of wartime controls.

The quantity allowance or bonus for volume question does not appear again in the tire meeting minutes until the beginning of 1947. The minutes of a sales managers' meeting held on January 28, 1947 report a discussion on the matter:

"..."

BONUS FOR VOLUME SCALE AND SALES POLICIES: It was suggested that the present industry bonus for volume scale weighed too heavily in favour of the large dealer, and that subject to approval by General Managers, a sub-committee of Sales Managers should be appointed to study and report on the situation.

This suggestion precipitated a lengthy discussion in which it was argued that the bonus for volume scale was only one factor in a complex problem and could not be considered in isolation from the other factors.

It was finally agreed to recommend for consideration by General Managers that a sub-committee of Sales Managers be appointed to study and report on the bonus volume scale, trade discounts, dealer-distributor distribution, and industry sales policies generally.

..."

(Exhibit 2217)

Although the question of allowances to dealers appears to have been one of the matters foremost in the minds of the industry's sales managers at that time, it is not known whether in fact a sub-committee was appointed to make the study and the report mentioned in the above

minutes. The minutes of the meetings of the Tire Division held after the suspension of price control on April 2, 1947, which, as mentioned previously, are substantially free from direct reference to prices, do not refer to this committee; nor do they mention any discussion leading up to the substantially revised program on dealer allowances that became effective in the tire industry at the end of October of that year.

However, a report of a sales managers' meeting held on October 17, 1947 made by M. C. Moyer, who was then Manager of Gutta Percha's Tire Division, to his general sales manager gives in some detail the various changes in the dealer's allowances structure which were adopted by the Tire Companies for the 1947-48 tire-year, as well as the manner in which the new program was adopted. The memorandum, which is dated October 17, 1947 is quoted here in its entirety. It should be kept in mind that certain of the comparisons are apparently being made between the proposal contained therein and a previous proposal rather than between the proposal contained therein and the then current practice:

"At a meeting of Tire Sales Managers, this morning, we again discussed the matter of bonuses and discounts. There was considerable feeling on the part of all those in attendance, with the exception of Goodyear and Goodrich, that due to current conditions it might be well to leave our present contract in force until at least November 1st, 1948. Any such plan, however, was violently opposed by Goodyear and Goodrich, and our attention was again directed to the tentative scale of bonuses and discounts discussed last week. It was finally agreed that subject only to the approval of General Managers of individual Companies, the following programme would be put in force, effective November 1st, 1947.

BONUS AND DISCOUNTS

22½% trade discount on passenger, truck, tractor and implement tires.

35% on all tubes.

3% dealer monthly franchise allowance to be based monthly on all purchases of tires and tubes computed on dealer billing prices and an annual bonus on all tire and tube purchases as follows:

General Bonus

1,000 -	2,000 -	2%
2,000 -	4,000 -	3
4,000 -	6,000 -	4
6,000 -	9,000 -	5
9,000 -	12,000 -	6
12,000 -	15,000 -	7
15,000 -	and over	8

Truck Bonus

1,000	-	1,999	-	2%
2,000	-	3,999	-	2½
4,000	-	5,999	-	3
6,000	-	7,999	-	3½
8,000	-	9,999	-	4
10,000	-	14,999	-	4½
15,000		and over		5

Annual bonus will be calculated on net billing, less 3% dealer franchise allowance, less sales and excise taxes.

All prices, allowances, terms and conditions are subject to change without notice and the basis of calculation of annual bonuses.

You will note that in paragraph one of the above, we mention 22½% trade discount on passenger, truck, tractor and implement tires. Since a new franchise, under this programme, is inevitable it is suggested that some specific reference be made that this trade discount applies to first line tires only.

You will also note that the suggested discount on tubes has been increased from 30 to 35%.

The major change, of course, is in the revised, suggested truck bonuses and we have included, as a suggestion of the wording of a new franchise, the final paragraph in the above table. This programme, so far as Sales Managers are concerned, is definitely predicated on the basis that yearly bonuses will be paid after the 3% monthly allowance has been deducted, together with excise and sales taxes. If these deductions are not included in the programme, then Seiberling and Dunlop and Firestone at least are not prepared to give their approval.

As the matter now stands, this programme, on the approval of individual General Managers, will become effective, but no notice of the change in programme will be made to Dealers, before Wednesday, October 22nd. On and after that date, all manufacturers will advise their Dealer organizations of the new discount and bonus arrangement, as they see fit.

It was the consensus of opinion of Sales Managers, with the exception of Firestone, that their General Managers would approve of this programme. Mr. Raycroft of Firestone, expressed some doubt as to his ability to secure final approval from the General Manager of his Company. It was finally agreed that Mr. Raycroft would advise each Sales Manager by phone as to their acceptance or otherwise, not later than Tuesday, October 21st, and in the event of the General Manager of any other Company not being in agreement,

the Sales Manager involved would notify all other Sales Managers. It was decided to secure the approval or otherwise of each General Manager, rather than request a meeting of General Managers, due to the shortness of time before the end of this contract year.

As you know, it was our thinking from a casual survey of the first proposal that it would increase our over-all sales expense. Apparently, both Dunlop and Seiberling had worked out the programme as it applied to a number of actual experiences within their own Dealer organizations and they both advised the writer that based on their calculations, the proposed programme, even if annual bonuses were paid on taxes, would show an over-all saving of approximately 1%. With bonuses being paid after the deduction of taxes, the over-all saving should therefore be increased considerably.

Since it appeared our position might be considered comparable to Dunlop and Seiberling, and since it became quite evident that we could not come to an agreement on extending our present programme for another contract year, the writer agreed with the meeting, subject of course to the final approval of our Management."

(Exhibit 2493)

In his evidence before the Commission Mr. Moyer said:

"Q. . . . Do you recall having written that letter, Mr. Moyer?

A. Yes sir.

Q. Do you recall the meeting to which it refers?

A. Yes, I think I do.

Q. Apparently there was a discussion on the bonus and discount structure?

A. That is right.

Q. . . . Had there been a discussion the week previous to that?

A. I would say yes.

. . .

BY MR. BEAUCHEMIN:

Q. . . . Do you recall whether that programme was adopted by the General Managers?

A. No, I do not. I do recall that this discussion was started by Carl Cooper of Goodyear, whose fear was that the big dealers were becoming too powerful, and the little dealer, by the same token, too weak. . . .

. . .

Q. And the effect of this proposal, I am putting it perhaps over simply, was to decrease the price at which the small dealer can buy on the average slightly and to increase slightly the price at which the large dealers buy?

A. That is right. . . .

. . .

Q. (This proposal) is not as drastic a proposal as Goodyear first proposed?

A. I wouldn't say as Goodyear; there were some others. As I say, there were proposals of almost every kind going around, and this to me seemed the least hurtful to us.

BY THE DEPUTY COMMISSIONER:

Q. This is the best compromise you could see?

A. The one that we got the major recovery in the light of our dealer organization - our dealer organization being by and large the smaller dealer."

(Evidence pp. 6824, 25, 27, 28, 29)

As mentioned in the above memorandum the shortness of time between the sales managers' meeting and the beginning of a new tire year on November 1 made it necessary to secure the general managers' confirmation of the agreement reached at the sales managers' meeting of October 17, 1947 without holding a special general managers' meeting for the purpose. This approval was evidently secured. Seven of the eight Companies are known to have put the new bonus structure into effect for the tire year beginning November 1, 1947 and the oral evidence indicates that it was adopted by the eighth company also. In the case of Seiberling, the new structure was modified, as had been the old structure, by setting up, in addition to the category of buyers to whom the common structure applied, a number of additional categories in respect of which the volume discounts were somewhat more favourable than under the common structure.

These new contracts did not disturb the dealer's traditional trade discount of 22½ per cent on tires and 35 per cent on tubes but introduced a new 3 per cent monthly allowance to all dealers based on dealer billing prices as well as the revised scale of allowances which were to be calculated on net dealer billing prices less sales and excise taxes, thus putting into effect various changes in the dealer sales program that had been discussed in the industry from time to time for a number of years.

The new contracts did not provide, as had the existing contracts, for any allowance in respect of accessory and repair material items. As already mentioned, the discussions leading to the decision to discontinue the allowance on such items are described in Chapter 2 of Part IV of this Report.

E. Agreements on Prices to Governments and other Large Consumers

(a) General

In consideration of the large volume of tires and tubes purchased, special discounts from list prices were granted by the Tire Companies to certain large consumers such as the Federal and Provincial Governments, the transcontinental railways, cities, towns, municipalities, etc., and certain large commercial accounts like bus and transportation companies, some of which were referred to as "National Accounts."

The price basis on which these large consumers would purchase their requirements of tires and tubes has been the subject of agreements among the Tire Companies.

(b) Prices to Governments and Railways

The practice generally adopted by the Tire Companies in selling to the various departments of the Federal and Provincial Governments, as well as to other National Accounts has been to sell directly from company branches or distributors. As a rule the agreed price to this class of consumer has been 10 per cent, 10 per cent and 2 per cent from Consumer List. The agreed discount is set out in respect of some of those accounts in the minutes of a general sales managers' meeting of March 10, 1937:

". . .

Municipalities: Agreed that for casings and tubes in quoting, tendering and selling to Provincial Governments and their departments, to Cities, Counties and Municipalities and their departments, the minimum price shall be 10%, 10% and 2% (cash) off consumer list with it stated on tenders and invoices that there is no allowance for trade-ins.

". . ."

(Exhibit 2189)

Some of these discounts were reaffirmed at a general sales managers' meeting of August 12, 1937:

". . .

Discounts to Townships, Counties and Municipalities having been complained of, it was reaffirmed that the maximum would be 10%, 10% and 2%.

". . ."

(Exhibit 2184)

The City of Toronto received preferential treatment at that time in that it was granted Dealer Billing price whilst other accounts were still to be quoted less favourably at 10 per cent, 10 per cent and 2 per cent off Consumer List. The following is an excerpt from the minutes of a sales managers' meeting held on April 5, 1938:

"Government and Municipal Buying: Agreed that Toronto shall be sold at dealer billing; that other cities, towns and municipalities

shall be sold at 10%, 10% and 2% off list. There is to be no allowance for trade-ins.

The Federal Government is to be quoted and sold at 10%, 10% & 2% off list.

Provincial Governments are to be sold at 10%, 10% and 2% off list and less sales-tax and excise poundage tax."

(Exhibit 2174)

Provincial governments were exempted from paying Sales and Excise (Poundage) taxes on tires purchased for their own use.

The agreed discount of 10 per cent, 10 per cent and 2 per cent on sales to the Federal Government was applied in respect of purchases by every department of the Government throughout Canada. Depending on whether deliveries were made in the east or in the west, the discount was applied against eastern or western consumer list prices, as recorded in the minutes of a general sales managers' meeting held on August 4, 1938:

" . . .

East and West Prices: Agreed that companies will see that hereafter quotations and sales of tires and tubes to the Federal Government will be Western prices for Western deliveries and Eastern prices for Eastern deliveries.

. . ."

(Exhibit 2166)

Some sales of tires and tubes to National Accounts were made by company dealers and in the following instance dealers were instructed by their respective tire and tube suppliers as to the proper price basis for invoicing these particular accounts.

Respecting sales to one of the National Accounts, C. B. Cooper, of Goodyear, wrote a circular letter to the sales managers of the other Tire Companies on May 26, 1939:

"Dear Sir :

. . .

A few days ago quotations were requested by the Canadian National in Montreal and while some companies or company dealers quoted at 10/10 and 2% others admittedly had quoted at dealer's plus the cash discount for tires and tubes.

We believe that it would be a mistake to regard these instances of prices to Canadian National as local price problems. We feel that not only will this question of prices to the Canadian National spread to other points but that, if not corrected, within a short

time a comparative situation will be brought about with C.P.R. and even other large national accounts who have been satisfied to purchase on the standard basis of 10/10 and 2%.

Naturally, we are receiving enquiries from some dealers through our branches and from branches direct as to the proper basis of quotation for Canadian National. It is our belief that it would be to the best interests of all concerned if all companies reaffirm to their organizations the established price basis for tires and tubes to the railroads.

(Exhibit 2693B)

..."

The following day, on May 27, C. N. Larsen, Gutta Percha's General Sales Manager, replied to Mr. Cooper, with copies to all other sales managers and the secretary of the Association:

"I am glad to get your letter of the 26th inst. regarding the price of tires and tubes for the Canadian National Railway. Early this week, I had a letter from our Montreal Branch regarding an inquiry they had received, and I endeavoured to get either you or Mr. Richards by telephone, but was unsuccessful. My letter stated that a meeting of the various manufacturers had been held in Montreal, and at that time, only one manufacturer, namely Firestone, had quoted better than 10/10/2%. Firestone expressed their willingness to withdraw that quotation.

It was only last week that we quoted the Canadian National Railways in Toronto on the basis of 10/10/2%, but lost the order. We afterwards learned that it was placed at better than dealers' net billing, but we do not know who received the order. Knowing this had happened and being anxious to prevent the spread of broken prices, I wrote our Montreal Manager as follows:

"In view of the fact that you have discussed this inquiry at a meeting and that so far as you know, only one broken quotation has been made, which the manufacturer is quite willing to withdraw, I would say that this is a good opportunity to try and hold prices. If all the manufacturers will agree to quote 10/10/2% on both tires and tubes and undertake to see their dealers do the same, I would consider that the Montreal Managers had done a wise and constructive thing. To break prices to the Canadian National Railways is bound to have far-reaching results. Other departments of the Federal Government will get to hear of it and it will tend to break down prices to the railway at other points where prices have been holding firm. My judgment would be therefore, that you get in touch quickly with the representatives of the other companies and tell them that you have heard from your Head Office that you are to quote the agreed price of 10/10/2% on these tires and tubes, with the further understanding that you will all endeavour to control your dealers in quoting on this inquiry. After the order has

been awarded, the successful tenderer will advise the others, which will tend to build up confidence, for without confidence in each other, there is not much hope of having any agreement last very long.'

This quotation from my letter expresses fully our views on this situation. We are quoting 10/10/2% on this inquiry, but we do not mind admitting that what happens down in Montreal in connection with it, will have a very definite bearing on future inquiries."

(Exhibit 2702)

Mr. Cooper also received assurances from General, Dominion, Goodrich and Seiberling that the discount to the Canadian National Railways was being adhered to (Exhibits 2693A, 2676, 2684, 2708).

During most of the control period the great majority of the Dominion Government's purchases of tires and tubes were made on a negotiated basis or on the basis of a discount of 15 per cent and 2 per cent from "Dealer Billing" prices. These sales, of course, were subject to audit and profit control.

The situation in respect of sales to the Dominion Government during most of the control period is outlined by C. N. Larsen of Gutta Percha in a memorandum to the general manager of his company on October 4, 1946:

"MEMO TO: Mr. J. R. Belton,
General Manager,

SUBJECT: Tire Prices to Federal Government.

Prewar all Departments of the Federal Government were supposed to purchase their requirements of tires and tubes at 10/10/2% for cash from consumer list. This plan was not scrupulously followed by all companies for from time to time we heard that some Department or another would be quoted dealer prices. In those days there was no Department of Munitions & Supply or its successor, Reconstruction & Supply. When M. & S. was set up and began to send out enquiries for large quantities of tires, the General Managers decided that the Government was entitled to something better than the price that applied in normal times when they picked up tires in small quantities. It was, therefore, arranged that the Department of Munitions & Supply and the Department of National Defence should buy tires and tubes

at a discount of 15/2% from dealers' net billing, and net prices were worked out on that basis. Other Federal Departments continued on 10/10/2% for cash. This arrangement was made early in 1940.

. . . Then came ceiling prices, based on those ruling from September 15th to October 13th, 1941, so all Federal Departments continued to buy tires at a discount of 10/10/2% from consumer list, with the exception of M. & S. and National Defence who bought at net prices equivalent to 15/2% from dealer.

V-E Day was in May, 1945, and V-J Day in August, 1945, and Government purchases of tires slumped. Early this year the Sales Managers raised the question of the prices that should now be charged to the Federal Government. The Association Secretary wrote to Rubber Control. On the basis of Mr. S. G. Nicholls' reply of March 15th, it was agreed:-

1. The Department of Reconstruction & Supply should be sold at cost plus. (Note:- This Department purchases for Department of National Defence, Army, Navy and Air Force.)

2. Crown companies and Government-financed projects as listed in Mr. Nicholls' letter of March 15th, to be sold at dealer list less 15% and 2% for cash.

3. R.C.A.F. should be sold at dealer billing less 2% for cash, no bonus for volume, on local purchases up to \$50.

4. All other Federal Government Departments and organizations should be sold at dealer billing less 2% for cash, no bonus for volume.

There was lack of agreement among the Tire Sales Managers regarding these decisions. If the Department of Reconstruction & Supply picked up a tire from one of the companies at Vancouver, how could that branch determine the cost plus basis on which to charge it. Why should Crown companies and Government-financed projects continue to purchase at dealer list less 15% and 2% for cash when the war was over and their contracts in most cases have been cancelled. Why should all other Federal Government Departments buy at dealer billing less 2% for cash when prewar they were sold at 10/10/2%. These various questions were submitted by the Rubber Association to Mr. Martin and he replied under date of April 12th, 1946 as follows:-

'Prior to the war, Government Departments purchased tires at a discount from list. During the war, these discounts were continued except that (1) the Department of Munitions & Supply purchased war supplies at prices arranged by it with the manufacturers and (2) Crown companies and Government-financed projects purchased at billing prices to dealers less 15%, the orders for these passed through the Department for approval. As the war is over and purchasing now returns to pre-war level, which on tires will mean small orders

and mainly pickups at various places across Canada, the discounts in effect prior to the war and maintained in the basic period should apply to all Government Departments equally, including Crown companies, Government-financed projects, Department of Transport, and the Armed Service buying small lots or pickups across Canada. An exception would, no doubt, have to be made for the Department of Reconstruction & Supply on bulk purchases for Armed Service requirements (but not for pickups).'

On the basis of this memorandum, it was agreed that all sales to the Dominion Government, including Crown companies and Government-financed projects, should be at list less 10/10/2%. The only exception to this rule should be bulk purchases by the Department of Reconstruction & Supply at negotiated prices. The above is an extract from the Tire Sales Managers' Meeting of April 29th, 1946.

. . . It is my belief that all Departments of the Federal Government should buy their tire and tube requirements on the same basis, and that basis should be 10/10/2% from consumer which is the price that is established for trucking companies operating 25 or more trucks. I also feel that the industry should be agreed on this policy. Mr. Atkinson would doubtless ask quotations from individual companies, but the price he would obtain would be the same from all. I do not favour making a contract with the Government for any period of time. Our prices are subject to change without notice.

. . . "

(Exhibit 2482)

With the end of hostilities in 1945, purchases of tires and tubes by the Federal Government, as stated by Mr. Larsen, decreased sharply and the basic period price of 10 per cent, 10 per cent and 2 per cent from Consumer List on all sales to the Government, except bulk purchases by the Department of Reconstruction and Supply which had replaced the former Department of Munitions and Supply, was reaffirmed at a sales managers' meeting of May 27, 1946:

" . . .

. . . The meeting unanimously re-affirmed that the correct prices to various Governments are as follows:

All Federal Government Departments and organizations including Crown Companies and Government-Financed projects (except the Department of Reconstruction and Supply on bulk sales at negotiated prices): List less 10/10/2%

. . . "

(Exhibit 2226)

Maximum prices to railways as well as to provincial governments during the price control period were fixed at 10 per cent, 10 per cent and 2 per cent from Consumer List, the latter discount being the cash

discount. At various times during that period, and especially toward the end of the period when more supplies became available for those accounts, the agreed basis on which provincial governments were to be billed for their purchases of tires and tubes was reaffirmed. The following is from the minutes of a sales managers' meeting of April 6, 1944:

"Pricing of Sales to Provincial Governments: Mr. Needles pointed out that the introduction of discounts off list on sales to Provincial Governments led to some uncertainty as to the correct adaptation of the pricing formula recorded in the minutes of the meeting of February 2nd, 1942. It was agreed that the correct formula was as follows:

List Price	\$100.00
Less 10% and 10%	<u>19.00</u>
	81.00
Less excise	<u>5.00</u>
	76.00
Less 7.41% sales tax	<u>5.63</u>
Price to Province	\$70.37 "

(Exhibit 2246)

Again at a sales managers' meeting of April 29, 1946 the agreed prices to provincial governments were confirmed:

" . . .

. . . It was confirmed that the correct price for sales to Provincial Governments is:

List Prices less 10/10/2%, less excise tax, less sales tax
(Note: Sales Tax is charged to the Governments of Quebec, New Brunswick and Nova Scotia, which have their own arrangements with the Department of National Revenue for recovery of the tax).

. . . "

(Exhibit 2228)

In the same year the matter of prices to the Province of Saskatchewan became a subject of discussion among the Tire Companies. On May 21, 1946 Goodyear's Saskatchewan Division manager wrote to his General Sales Manager, C. B. Cooper:

" . . .

I should like to point out that there has been some drastic changes in the handling of Saskatchewan Government purchases since the present Government came into power. At one time each Department of the Provincial Government had its own Purchasing Commission, and here

I might add that in some instances we billed at 10-10 and 2% and in others it was on Dealer Billing basis. This is impossible under the present centralized buying and it was Bowman Brothers, who at that time were Firestone Distributors, who made the decision, in so far as going to Dealer Prices.

I might also tell you that early this year the Purchasing Commission of the Government not only demanded Dealer Billing, but were also very insistant that they be paid a bonus on volume. They pointed out that they were operating their own garages, also that one of the Crown Companies is now known as the Saskatchewan Reconstruction Corporation. This was set up to train returned veterans in the various ramifications, such as, machinists, automobile and truck mechanics, building and machining various equipment, not alone for the Government itself, but also for any individual who required and could use their services. They also pointed out that in so far as this branch of the Government's operation was concerned, they were in a position and would supply trade with our tires and tubes.

I might tell you that I discussed this with Mr. Jack McGail, of the B. F. Goodrich Rubber Company, in this office and also at Bowman Brothers' and it was decided that there was no Dealer Contract that would adequately cover this type of an operation and we were successful in discouraging their request for bonus on volume.

As you no doubt see from this resume, with Bowman Brothers today handling Dominion, I am sure they will continue to invoice to the Government at Dealer Billing.

I appreciate that the discounts referred to in Mr. Evan's telegram, which was confirmed by a recent letter, are ceilings and I want to assure you that we also appreciate the advantage in selling merchandise in short supply at the 10-10 and 2%, rather than Dealers.

I am contacting Mr. Switzer this afternoon to more thoroughly discuss this situation and you can rest assured that we will endeavour to adhere to the new price setup, but I am somewhat dubious as to its ultimate acceptance.

. . ."

(Exhibit 2439)

On May 27, 1946 a sales managers' meeting reaffirmed that prices to provincial governments, railways and express companies were 10 per cent, 10 per cent and 2 per cent from Consumer List prices less appropriate allowances for sales and excise taxes in the case of the provinces (Exhibit 2226). And on May 29, 1946 Goodyear wrote its Saskatchewan Division manager:

"At a Sales Managers meeting the day before yesterday, every company reaffirmed their intention to carry out the present industry understanding on prices to Provincial Governments on the basis of 10/10% off consumer list,

I frankly gave them the information outlined in your letter of May 21st. Both Firestone and Dominion stated that they would immediately correct this situation.

Mr. Skelton will be in the West within the very near future and will discuss this subject with you. In the meantime, do not quote the Saskatchewan Government directly on other than the agreed basis."

(Exhibit 2444)

Sales to the Province of Saskatchewan were still apparently an unsettled matter on August 14, 1946 when Firestone wrote to the secretary of the Association:

"At the Sales Managers Meeting of May 27th last billing to Federal Government and its departments, Provincial Governments and so on was agreed upon.

We are advised by our Regina Office that four Rubber Companies are billing the Provincial Government there at dealer prices less Excise and Sales Tax. Billing is returned to our Branch asking for correction due to the fact that our billing is predicated at list less 10, 10 and 2 less Excise and Sales Tax.

We would appreciate having this checked as soon as possible as our office is asking that they may be competitive immediately. Could we have an early confirmation from each of the Rubber Companies that instructions have been forwarded to their Saskatchewan Offices to use the billing as outlined in the Minutes referred to above."

(Exhibit 2645)

Following receipt of Firestone's letter, the following letter was sent to the companies by the secretary of the Association on August 21, 1946:

"Please refer to my letter of August 15th on the subject of sales to Saskatchewan Provincial Government.

In reply to this letter, one company has advised us that their Saskatchewan branch was advised in a sales bulletin following the Sales Managers' Meeting of May 27th, of the agreed terms of sale to the Provincial Governments, and they have no knowledge at head office of any deviations from these terms. Another company indicates that they also advised all their Saskatchewan branches and distributors shortly after the meeting of May 27th, as to the price at which Provincial Governments should be sold, and they are now reaffirming these prices to their Saskatchewan Branch.

A third company points out that they handle the province of Saskatchewan through a distributor whom they are again reminding of the correct price of sales to a Provincial Government. A fourth company writes as follows:

'We had recent cause to investigate the development of the pricing structure with the Saskatchewan Government, and the following information was reported to us.

. . .

According to our information there were at least three companies, including ourselves, in the net dealer billing price, and I would assume that other companies may have been selling them through their local dealers, and if so that they would necessarily be required to supply at competitive billing prices.'

It is apparent from the above that the situation in regard to sales to the Saskatchewan Provincial Government has got somewhat out of hand, and I shall place the matter on the agenda for discussion at the next meeting of sales Managers."

(Exhibit 2646)

2, 1946: Finally Goodrich wrote to its Winnipeg branch on October

"As a result of recent discussions reference sales to the Province of Saskatchewan, it has been decided that we as a Company will sell and bill them at Consumer List less 10, 10 and 2% discount, less Federal Tax. It is assumed that other rubber companies and/or their jobbers will do likewise.

It is also assumed that our dealer and other dealers in Saskatchewan will follow the above pricing program and they should be advised accordingly.

In the event that you do not find this pricing program holding, please acquaint me with full facts and details immediately."

(Exhibit 2768)

After price controls were suspended on April 2, 1947, the recognized discounts from list prices to the provincial governments which had originated prior to the war and which had remained in effect throughout the war and control periods appear to have been maintained in the post-control period. The following is a copy of minutes of a meeting held in Winnipeg on June 13, 1947 which was forwarded by Gutta Percha's Prairie Branches manager to the head office of the company in Toronto:

"WINNIPEG

Minutes of Winnipeg Branch Tire Meeting Held in Offices of Gutta Percha & Rubber, Limited, on Friday, 13th June, 1947 at 1:30 p.m. o'clock.

Present:

Messrs. E. C. McConnell	Representing Goodyear
D. E. Rogerson	" Dunlop

Fred A. McRae	"	"
P. J. McGale	"	Goodrich
J. J. Innes	"	Dominion
M. M. Macrae	"	Seiberling
Wm. McIlveen	"	Firestone
Wm. Bell	"	General
R. A. McClellan	"	Gutta Percha
(Secretary)		

Meeting was called to discuss tire prices authorized as applying to Provincial Government Departments, and to endeavour to arrange that quotations submitted to the Provincial Government of Manitoba shall be drawn up in correct form and at the proper figure, - on similar occasions previously, it being alleged, that there was a variety of prices quoted.

It was moved and seconded that those present agree to approach each of their dealers who may be quoting the Provincial Government of Manitoba, explaining clearly that the discount applying is 10/10% from Consumer list, subject to terms, 2% 10th of month following date of shipment or net cash end of month following shipment.

Carried unanimously.

There being no further business, adjournment was moved at 3:30 p.m. o'clock."

(Exhibit 2476b)

The following letter of December 19, 1947 written by Gutta Percha's Tire Division manager to the company's Montreal branch manager indicates that it was the common policy of the Tire Companies, after the suspension of controls, to maintain prices to various Federal Government departments at 10 per cent, 10 per cent and 2 per cent from Consumer List. It also indicates an endeavour to prevent a distributor from upsetting this policy:

"This will acknowledge your letter of December 18th, listing a number of items of tires and tubes that the Department of Trade & Commerce are interested in securing for their Central Ordnance Depot in London, Ontario. As we understand it, this enquiry came directly from Ottawa to U.A.P. Limited.

It is the general custom for various Governmental Departments to ask for quotations for tires and tubes in quantities, only from the manufacturers, and it has always been the policy of the manufacturers to quote the regular discount of 10/10% off consumer list, which as you know is the recognized discount for fleets.

Apparently, the Department of Trade & Commerce feels they should buy tires and tubes at a more advantageous price than quoted the largest commercial accounts, and they systematically question each Canadian tire manufacturer with a view to securing a better price. Since this is the recognized discount, we have endeavoured to outline our position with the Department, but apparently they

are still anxious to secure a lower discount. It is possible that with this objective in mind, Ottawa has sent requests for quotations to many of the larger retail dealers and distributors in Ontario and Quebec; on the assumption that some Dealer in his zeal to close a large order might disregard his profit position and quote lower than the recognized discount.

We have already quoted on this tender at the regular 10/10 and 2% for cash and while U.A.P. are at liberty to quote, if they see fit, we should like to point out that unless they quote a lower discount they have practically no hope of securing the order, since Ottawa invariably place their orders direct with manufacturers. If, on the other hand, U.A.P. and any other distributor or dealer quotes below the recognized discount they might receive the order but in the long run they would only suffer, due to the fact that such action would merely precipitate the usual vicious circle of price cutting which always ends in a loss to all concerned.

We have endeavoured to explain the situation and while we may or may not secure ourselves all or any part of this order, for the reasons noted above, we have steadfastly maintained that there is a regular and legitimate discount to fleet owners regardless of who they are, including Government Departments. On that basis we have quoted and we are prepared to secure the business or miss it on the same basis. We can only suggest that U.A.P., in their interests, if they quote, quote on a basis of consumer list, less 10/10 and 2% for cash, tenth of month following shipment."

(Exhibit 2496)

(c) Passenger Transportation Bus Companies

Passenger bus operators throughout Canada are amongst the largest, if not actually the largest, individual users of bus and truck types of tires and tubes. In consideration of their large consumption of tires and tubes, these firms have been granted preferential discounts by the Tire Companies.

Prior to January 1939, the agreed prices for bus companies whose names appeared on the "Passenger Transportation Bus Companies List" were Dealer Billing prices. Through their purchasing power however, many of the bus companies succeeded in obtaining an extra 10 per cent discount from various Tire Companies or their dealers. The dealer who had granted the additional 10 per cent discount would ordinarily be reimbursed by his supplier. The practice became prevalent enough for a proposal to be put forward that it become a recognized industry practice. The suggestion was advanced at a sales managers' meeting of January 26, 1939:

" . . .

Passenger Transportation Bus Companies: While a decision of some years back was that listed companies of this type were to be sold tires and tubes at dealers' net billing, it was stated that at present most of such listed companies are able to buy at dealer price less 10%, particularly from some tire dealers.

A proposal to recommend to General Managers that companies shall sell direct to B. C. Electric and bill at dealer list less 10%, was voted for by Goodrich, Goodyear, Dominion and Dunlop and voted against by Gutta Percha.

A proposal to recommend to General Managers that dealer billing less 10% shall be extended to the entire list of such bus companies, with a couple of exceptions, was voted for by Goodrich, Goodyear, Dominion and Dunlop and voted against by Firestone, Seiberling and Gutta Percha.

The list was revised by correction of names which have changed, dropping the name of one company that has ceased operating and adding some new names.

. . ."

(Exhibit 2159)

The revised list as proposed at the meeting contained the names of 23 bus companies, 21 of which it was proposed should be sold at Dealer Billing prices less 10 per cent, and two at Dealer Billing prices only.

These proposals were adopted at a sales managers' meeting held on March 14, 1939 when it was agreed that, effective at once, 10 per cent off Dealer Billing prices should apply to the 21 bus companies listed in the January 26 proposals; the other two bus companies were to purchase at Dealer Billing prices only (Exhibit 2158).

Subsequently these two bus companies were listed with those entitled to receive 10 per cent from Dealer Billing prices and from then on various names were added to the list at tire meetings. When price control came into effect, about 30 bus companies were recognized by the industry as entitled to receive the preferred prices.

Subsequently during the control period bus companies with 25 or more buses in operation were added to the list. The matter was dealt with at a sales managers' meeting of September 17, 1943:

" . . .

Passenger Transportation Bus Companies: Agreed that companies listed during the basic period (September 15th to October 11th, 1941) as passenger transportation bus companies, to receive dealer billing less 10% and 2% (cash) for tire and tube purchases, should continue to receive those terms; and that other companies which may now be operating fleets of twenty-five or more passenger buses, should also be accorded these terms for bus tires and tubes. The list of these accounts is as follows:

. . ."

(Exhibit 2252)

The list contained the names of some 35 bus companies operating at various centres throughout Canada.

The 25-rule is mentioned as having been followed as early as 1934 on a list of "Dealer Price Lists" covering the period 1925-1939 found in the files of the Association.. It is also possible that the 25-rule was used as a rule of thumb, under the control regulations respecting maximum prices, to determine the class of consumers that was entitled to buy at dealer billing less 10 per cent and 2 per cent for bus companies.

In the succeeding years various bus companies were added to the list. The procedure usually adopted in adding the name of a bus company to the recognized list is reflected in the case of the New Brunswick Power Company, Saint John, N.B., whose name was proposed for inclusion in the list by Goodyear in a letter from that company to the secretary of the Association:

"New Toronto, Ontario,
January 7, 1944.

Mr. A. B. Hannay,
Rubber Association of Canada,
Commerce & Transportation Bldg.,
Toronto, Ont.

Dear Mr. Hannay:

We would like to propose the addition of the New Brunswick Power Company, Saint John, N.B., to the Passenger-Bus Transportation List to receive a special tire price of Dealers less 10% when tires are purchased for use on their passenger buses.

We have been officially advised that this account now is operating 25 registered vehicles, and within a few days expect to have a total of 28.

We are sending copies of this letter to the Sales Managers of the other Companies so that they can come prepared to vote on this addition at their next industry meeting and, in the meantime, make their own investigations relative to this account."

(Exhibit 2044)

The account was added to the list at a sales managers' meeting held on March 9, 1944:

". . .

Passenger-Bus Transportation List: It was agreed that the New Brunswick Power Company, St. John, N.B., be added to the list shown in sales managers' minutes of September 17th, /43.

". . ."

(Exhibit 2247)

The list was revised from time to time and new lists, prepared by the secretary of the Association, were distributed to the Tire Companies for correction. The following is from the minutes of a sales managers' meeting of February 25, 1946:

"PASSENGER TRANSPORTATION BUS LIST: The revised list submitted to companies subsequent to the meeting of January 14th, 1945, was reviewed.

It was approved with the following corrections:

- (1) The location of the S.W. & A. (Sandwich, Windsor and Amherstburg Ry.) should be Windsor, Ont.
- (2) The St. Maurice Transportation Co., Three Rivers, Quebec, should be added.
- (3) Ontario Motorways Limited, London, Ontario, should be Western Ontario Motorways Limited, London, Ontario.
- (4) B. C. Greyhounds Limited, Vancouver and Penticton, Caribou Greyhound Lines, Vancouver and Ashcroft, and Greyhound Lines Ltd., Nelson, B. C., should be deleted and the following substituted: Western Canadian Greyhound Lines Ltd., Vancouver, Penticton, Ashcroft and Nelson, B. C.

A new list will be issued containing these corrections.

For consideration at the next meeting, the status of the following companies should be checked by all companies:

Laval Transportation Company	St. Lambert, Que.
Saskatchewan Government Bus Lines	Regina, Sask."

(Exhibit 2233)

The list as approved at that meeting had grown to more than fifty names (Exhibit 2363).

During the remainder of 1946 and during the year 1947, a total of about a dozen additional names were added to the list. The following is an excerpt, dealing with the bus companies' list, from the minutes of a sales managers' meeting held on July 8, 1947:

"BUS TRANSPORTATION LIST: A number of accounts were considered with these results:

Added to List

Victory Bus Lines, Montreal, P. Q.
Collacut Coach Lines, Oshawa, Ont.

Check for Next Meeting

Algoma Steel Corp Bus Line, Sault Ste. Marie, Ont."

(Exhibit 2206)

Following this meeting, Seiberling wrote its Toronto Branch manager on July 14, 1947:

"It has been agreed that the Collacut Coach Lines, Oshawa, Ontario be added to the Passenger Transportation Bus List.

This Bus Company will now be entitled to Dealer's billing less 10% and the dealer selling the account may claim the 10% from us in the usual manner."

(Exhibit 2377)

Seiberling's Montreal Branch manager was also advised on the same day of the addition to the bus companies' list for his territory:

"It has been agreed that the Victory Bus Lines, Montreal, Quebec be added to the Passenger Transportation Bus List and from now on they will be entitled to Dealer billing less 10%.

. . ."

Referring to names of other accounts the letter added:

". . .

If you wish to make a recommendation as to the other accounts being added to the Passenger Transportation Bus List, it will be in order so long as you make the necessary investigation and ascertain definitely that the Transport Company has 25 or more licensed passenger buses."

(Exhibit 2380)

The minutes of a sales managers' meeting of August 5, 1947 show the addition to the list of one account and the minutes of a similar meeting on August 28, 1947 show the addition of "Algoma Steel Corporation Bus Line, Sault Ste. Marie, Ont." (Exhibits 2204, 2201).

The following memo from Goodyear's Commercial Tire Department manager to the general sales manager of the company, dated January 21, 1948 shows that at that time the composition of the Passenger Bus Transportation list was still a matter of common action among the Tire Companies:

"Recently one of the rubber companies had the following to say about the Veterans Sightseeing and Transport Company.

'We have investigated the status of the Veterans Sightseeing and Transport Co., Victoria. This account was considered to be a subsidiary of the Blue Line Transit Company, but last July, the B. C. Electric bought out both of these lines. Since then, we understand that the Veterans Sightseeing and Transport Company is still operating along with the Blue Line Sightseeing Company in Victoria, although owned and operated by the B. C. Electric Railway Company so it seems that it would be in order to keep the name of the Veterans Sightseeing Transport Company on the list.'

We have been in touch with our Vancouver Branch, and they suggest that this account be not shown separate, since they only operate 6 pieces and are owned and operated by Blue Line Sightseeing Co. While it is true that Blue Line in turn is owned by B. C. Electric, we see no point in showing a subsidiary with only 6 pieces which is considerably less than the 25 vehicle minimum. We thought that you should have this information in case it comes up at the next Sales Managers' Meeting."

(Exhibit 2445)

On April 12, 1948 Seiberling's Assistant Sales Manager, A. P. Acheson, wrote to the assistant treasurer of the company:

"The following names have been added to the Passenger Transportation Bus List entitled to receive Dealer's prices less 10% and 2% cash.

McLellan Transportation Co.
Autobus Drolet Ltd.
Western Canadian Greyhound

Kirkland Lake, Ont.
Quebec, P. Q.
Vancouver, B. C."

(Exhibit 2361)

This followed within a few days of the meeting announced in the following memorandum dated March 24, 1948 from R. I. Raycroft, General Sales Manager of Firestone to E. W. Barbour of the same company:

"Mr. Oakie of the Rubber Association called yesterday and advised there will be a meeting April 9th at 10:00 o'clock in the Rubber Association Offices, Toronto.

Mr. G. B. Smith advised me that Mr. Needles of Goodrich had called him regarding lumber companies buying at dealer prices on the coast and other problems in the industry."

(Exhibit 2594)

These special prices applied to tires and tubes for use on buses only and apparently did not extend to the purchasers' requirements for

other purposes. In this respect Goodrich wrote to the secretary of the Association on August 29, 1947:

"Dear Sir,

ALGOMA BUS LINES

Since yesterday when Algoma were approved on the Transportation List it has been brought to our attention that the Algoma Company operates eleven trucks in their Steel Plant plus eleven more trucks on their Ore properties.

We should definitely make sure that the preferred discount applies only to the bus lines, and under no circumstances should tires be sold to the Algoma Company for their other interests.

We are advising our Toronto District Manager accordingly and felt that we should go on record with you at this time."

(Exhibit 2603)

F. Agreements on Warranties and Adjustments

An important aspect of the merchandising of tires and tubes, and especially of the former, is the kind of guarantee or warranty under which the product is sold. One tire warranty may differ from another in many ways. It can be a guarantee against inferior or bad materials or workmanship, against some or all types of tire wear, against damage arising from some or all types of road conditions or against a combination of these hazards. The guarantee also can be effective for a definite period only or it can be for the life-time of the tire.

In the final analysis, the tire warranty may well be regarded as part of the over-all tire price structure since the ultimate cost or price of a tire which fails before its normal life-time is determined by the kind of warranty which it carries. Viewed in this light the warranty can be used as a competitive weapon of considerable significance, a fact which was recognized by the Tire Companies.

An appreciable portion of the tire meetings has been taken up by discussions among the Tire Companies on tire warranties generally and on the basis upon which tires should be adjusted under these warranties. Agreements were reached from time to time upon the kind of warranty that would appear on each tire company's dealer contract or tire price lists, as well as upon a uniform basis for the calculation of adjustment allowances. Although final decision in these matters was taken at meetings of general managers or sales managers, most of the preparatory discussions and studies were made at service managers' tire meetings, where many of the minor details involved in the carrying out of industry warranty programs were worked out and settled in common.

Prior to the control period and for a number of years before

the war, two types of warranty were in force in the tire industry: the "Road Hazard" warranty and the "Standard" warranty.

Under the terms of the Road Hazard warranty the Tire Companies guaranteed usually for nine months or one year their tires against certain operating injuries arising out of the misfortune or carelessness of the operator and not related to faulty work or materials or other cause within the control of the manufacturer, including damage from many causes like faulty brakes, misalignment of wheels, overloading, and cuts and bruises due to highway conditions. The Companies undertook to make good this damage to car owners and to make proper adjustments either by repairs or, when the tire was beyond repair, by replacement allowances based on the number of months during which the tire had given satisfactory service. The Road Hazard warranty applied on those passenger car, truck and bus tires which were used under what were considered to be normal operating conditions. The Standard warranty, under the terms of which the Companies guaranteed the tires against defects in workmanship or materials, applied mostly on sales of tires to certain classes of consumers whose operations entailed more severe than normal tire wear. Tires coming under the Standard warranty were adjusted on a mileage instead of a time basis as illustrated by the following excerpt from the minutes of a service managers' tire meeting held on January 27, 1937:

". . .

Tire Abuse: Truckers of crude oil in Alberta, it is reported, are operating their trucks twenty hours a day with two drivers and a 30% to 60% over-load and upon poor roads. They are claiming and receiving adjustments under the Road Hazard Warranty for tires subjected to this abuse of abnormally destructive wear, although the terms of the warranty do not cover tires destroyed by this sort of abuse.

It was agreed that each company will at once instruct its adjustors at the proper points, that tires used on vehicles transporting crude oil are not subject to adjustment under the terms of the Road Hazard Warranty, but are subject only to the Standard Warranty guarantee against defects of materials or workmanship.

Transportation Bus Lines: Agreed that for the Greyhound Bus Lines operating in Alberta there shall hereafter be strict application of the adjusting basis of 15,000 miles for high pressure and 20,000 miles for balloon bus casings, when computing allowances in adjusting for factory-defects under the Standard Warranty.

". . ."

(Exhibit 2259M)

That the basis for adjusting tires under the Standard warranty was discussed and agreed upon in its application to particular cases is indicated by the foregoing, and also by the following quotation from a meeting of general sales managers held on March 10, 1937 which confirmed the basis upon which tires used by oil and gasoline tank truck operators in Alberta were to be adjusted:

" . . .

Tank Trucks: Endorsation was given to the decision of the Calgary adjustors' meeting of March 4th, that the Road Hazard Warranty did not apply to 'those operators hauling crude oil or gasoline in tank trucks, no matter where in Alberta this hauling may be done.' Tires on vehicles operating in such service will be adjusted under the Standard Warranty only, with allowance to be computed on the basis of tread disappearance. 'The Standard Warranty will not apply to truck tires showing "separation" trouble, when the adjustor definitely knows that the operator has received 20,000 to 30,000 or more miles of service .

. . ."

(Exhibit 2189)

In the early part of 1937 the tire industry considered the discontinuance of the Road Hazard guarantee which had come into effect three years earlier. The discussions were precipitated by reports that the Road Hazard warranty had been discontinued by the large tire companies in the United States. The following is from a general managers' meeting of February 23, 1937:

" . . .

Tire Guaranteeing: It was reported that standard tire companies in the United States had discontinued tire-guaranteeing under the terms of the Road Hazard Warranty, by which the tire-maker undertakes to make good to car-owners, by replacement allowances or free repairs, damages sustained by tires in use, due to blowouts, cuts, bruises, overloading, misalignment of wheels or faulty brakes.

The meeting agreed that it is manifestly unfair to expect a tire-manufacturer to make good for damages occurring to tires due to the carelessness or misfortune of the car owner over whose operations the manufacturer has no control.

It was pointed out that while the automobile manufacturer guaranteed his cars only against factory defects and only those disclosed within ninety-days after purchase of the car, the tire manufacturer guarantees for nine months or a year the tires on such cars, against injuries sustained in operating; and in addition guaranteed the tires against factory defects that may be disclosed any time in the life of the tire.

It was decided that at the next meeting, tire companies will pass upon a resolution declaring that hereafter the manufacturer's guarantee covering tires shall not go beyond providing repairs or replacement allowances for factory defects only, disclosed during the twelve months immediately following the purchase of the tire from a dealer by the automobile user.

Companies supplying mail-order, chain-store or oil company accounts will discuss this proposal with such accounts.

. . ."

(Exhibit 2190)

The matter was again raised at a general sales managers' meeting held on August 12, 1937:

". . .

Road Hazard Warranty: It was reported that this warranty has led to so many disputes between dealers and users and has developed so much ill will, that there is a growing feeling for its abolition. It was recommended that General Managers should consider whether or not, for the next tire year the issuance of Road Hazard Guarantees by standard companies should cease and guaranteeing be confined to the warranty for the life of the tire against defects of materials or workmanship, even though the Road Hazard Warranty should be continued by a special brand outlet.

. . ."

(Exhibit 2184)

The question of discontinuance of the Road Hazard warranty subsequently came up for discussion several times at tire meetings. The warranty was not abolished however until the scarcity of rubber caused by the war made it necessary for the Government to direct all tire sellers, including merchandisers of privately branded tires, to use a more restricted tire warranty.

Both the Road Hazard and Standard warranties used by the tire industry in the years before wartime controls entailed a great deal of interpretation and rulings on the part of the Tire Companies regarding their exact application.

Numerous tire meetings were held between 1937 and the end of 1941 at which many details concerning these two warranties were discussed and agreed upon. The following are excerpts from the minutes of a combined meeting of general sales managers and service managers held on January 25, 1938:

"Road Hazard Tire Warranty: Consideration was given to the new form of Warranty that has been adopted in the United States. It was decided that there should be no change by Canadian companies at present and that the matter may be brought up again around July 1st next.

. . .

Commercially Used Tires: It was reaffirmed that commercially used tires are not to be repaired under the terms of the Road

Hazard Warranty. It was reported that this is being done in Montreal.

Taxi Tires: If as reported, some Quebec City dealers are giving six months Road Hazard guarantee on tires used in taxi service, and effort will be made to have the practice discontinued.

Police Car Tires: Companies will again notify their representatives and dealers by letter on February 1st that guarantees under the Road Hazard Warranty are not to be given to tires on cars operated in police service. The extent of this practice will be looked into by companies and the matter will be again dealt with around July 1st next."

(Exhibit 2259k)

In the same respect the following is from a general sales managers' meeting of October 13, 1938:

". . .

Drive-yourself cars, it was agreed are to be considered for adjustment purposes in the same category as taxis.

". . .

Demonstration Cars; Agreed that tires used on demonstrator cars are not subject to road hazard warranty adjustment during the period that the car is used in demonstration car service, but after such car is sold such warranty may be issued and dated back to the time the tires were first put into road service.

". . ."

(Exhibit 2164)

The agreements entered into by the Tire Companies with respect to warranties extended to the allowances to be granted tire dealers for the servicing and repairing of tires falling under the warranty. This is illustrated by the following excerpt from a sales managers' meeting of April 21, 1939:

"Adjustment-Repair Charges: The following scale of adjustment-repair charge allowance recommended by a meeting of service managers was authorized to take effect immediately:

<u>Tire Size</u>	<u>Maximum Compensation</u>	
	<u>4-ply</u>	<u>6-ply</u>
4.40)		
4.50)		
4.75)	\$2.00	\$2.50

5.00)		
5.25)		
5.50)	\$2.50	\$3.00
6.00)		
6.25)		
6.50)	\$3.00	\$3.50
7.00)		
7.50)	\$3.50	\$4.00
For a spot-repair one dollar."		

(Exhibit 2157)

A different time limit was established for the free repairing, under the Road Hazard warranty of fourth line passenger car tires. The special time limit applying to these tires is set out in the minutes of a sales managers' meeting held on June 4, 1940:

". . .

Free Repairing: Approval was given to the Service Managers' recommendation that there shall be no free adjustment repairing of fourth line tires after three months from the date of sale. The time limit for such repairing of first, second and third line tires continues to be five months.

". . ."

(Exhibit 2143)

The same minutes contain another agreement made by the sales managers of the Tire Companies with regard to the warranty for off-the-road type tires, i.e. tires used wholly or in part off roads or highways:

". . .

Off-Road Tire Warranty: Agreed to give effect to the Service Managers' recommendation that the United States off-road time warranty shall be adopted by the Canadian tire industry. This warranty will be printed on the next price lists issued. In the meantime companies will inform their branches of this decision.

The American warranty is as follows: 'Every tire of our manufacture, bearing our name and serial number used wholly or in part in non-highway or off-the-road service, such as earth moving, grading, excavating, quarrying, stripping, logging, road-building, lumbering, farm service, agriculture (including airplane, industrial pneumatic and solid tires) when used on rims conforming to the Tire & Rim Association standards, is warranted by us against defects in materials and workmanship. If our examination shows that any tire has failed because of such defect, we will either repair the tire or make a reasonable allowance on the purchase of a new tire.'

". . ."

(Exhibit 2143)

As a measure of rubber conservation, aimed at promoting maximum care and economy in the use of tires, the Road Hazard and Standard warranties were prohibited by the rubber control authorities toward the end of 1941. The only warranty which it became permissible to use during the control period was one which guaranteed the tire against defects in workmanship and material only, and for a period of 90 days only after the day the tire was purchased by the consumer.

When the control authorities subsequently relaxed the warranty restrictions thereby permitting the issuance of the pre-control standard warranties, the 90-day warranty was kept in effect by the Tire Companies till the summer of 1947. At a general managers' meeting held on March 31, 1947, the eve of the suspension of Rubber Control, the guarantee question came up for discussion:

". . .

TIRE GUARANTEE: Tire guarantees were discussed at some length with particular reference to (1) the fact that all Government regulations respecting tire guarantees will be cancelled with rescinding of Administrator's Order A 1842 in the near future and (2) the written tire guarantee which Atlas is now using.

It was agreed that no change in the guarantee now being used by tire companies is required for the time being."

(Exhibit 2211)

The first formal steps to change the wartime 90-day warranty were taken at a sales managers' meeting held on July 8, 1947:

". . .

TIRE GUARANTEES: The meeting discussed the question of tire guarantees in the light of the facts that the Canadian Tire Corporation is offering an unconditional one-year road hazard guarantee, and Atlas is offering a written guarantee.

The meeting was opposed to any plan which involves the use of certificates, because of the cost and difficulty of administering such a plan. It was also opposed to a guarantee effective for a specified period because of its unfairness to the light mileage driver as against the heavy mileage driver.

It was finally suggested that the industry should adopt for all types of tires, a life-time warranty against defects in workmanship and material. All companies were in favour, except Dominion, which recommended a 12-month warranty.

The suggestion approved by the majority will become effective when approved by General Managers or at such time as General Managers designate.

". . ."

(Exhibit 2206)

On July 25, 1947 a meeting of general managers approved the principle of a life-time warranty against defects in workmanship and material for all types of tires and tubes, agreeing at the same time that no warranties based on mileage would be issued by the Tire Companies (Exhibit 2205).

The exact words to be used by each Tire Company with regard to the new warranty were agreed upon at a meeting of sales managers held on August 5, 1947:

". . .

LIFE-TIME TIRE GUARANTEE: The General Managers having approved the adoption of the Life-Time Tire Guarantee, the Sales Managers agreed upon the following exact wording:

'Every tire or tube of our manufacture bearing our name and serial number is guaranteed to be free from defects in workmanship and material without limit as to time or mileage. If our examination shows such tire or tube has failed under the terms of this guarantee, we will either repair it or make a reasonable allowance on the purchase of a new tire or tube.'

In addition, it was recommended that Service Managers should meet to decide on uniform instructions to be sent to the field regarding the guarantee, by the individual companies.

". . ."

(Exhibit 2204)

After the service managers of the various Companies had met to clear the various details involved in launching the new warranty (Exhibit 2202), a final meeting of sales managers on the matter was held on August 28 to finalize the warranty program (Exhibit 2201). The Life-Time warranty against defects in workmanship and material was subsequently put into effect by each Tire Company in spite of the fact that, according to the oral evidence, the Atlas Supply Company, a merchandiser of privately branded tires and tubes was guaranteeing tires and tubes on an unconditional basis with adjustments based on a 12-month period for private users and 6-month period for commercial users.

G. Branch Meetings

Replacement tires and tubes also came up for discussion at various regional or branch meetings held in such cities as Halifax, Quebec, Montreal, Ottawa, London, Windsor and Winnipeg, and attended by branch managers or distributors of the various Tire Companies. Minutes of these branch meetings were ordinarily prepared by one of the branch managers of the Tire Companies in each locality who acted as secretary of the regional group. Minutes were distributed to those concerned and copies forwarded to the head offices of the Tire Companies.

Although no departure from industry policy could be initiated at these meetings, branch managers used these meetings not only to discuss tire and tube merchandising problems generally, but also for the purpose of implementing programs of joint action agreed upon among the head office officials of the Tire Companies. Branch meetings were occasions to reaffirm and strengthen industry merchandising programs as well as to put forth any complaint that one or more of the Companies was not adhering to agreed prices and other practices. In these respects branch meetings supplemented head office tire meetings and assisted in implementing at the regional level the arrangements and agreements made among the head office managements of the Tire Companies.

On June 1, 1939 the following resolution was passed at a sales managers' meeting:

" . . .

Branch-Point Meetings: Agreed that each month, on a Monday to be designated, there must be a tire meeting attended by a representative of each company, for the exchange of views and information relative to tire business.

. . ."

(Exhibit 2153)

Again on July 21, 1939:

" . . .

Divisional Meetings: There was reference to the lack of company representation at one or more recent divisional meetings. It was agreed that the presence of a representative of each company at such meetings was highly desirable in order to secure and maintain the confidence of local representatives that programs are being carried out. Decided that each company will write its representative at each divisional point that it is important that they shall attend all such meetings and that where absence is unavoidable, the local secretary shall be notified to that effect in advance of the meeting.

Companies will instruct their divisional representatives that copies of minutes of meetings are to be sent to the Association office.

Local Merchandising Complaints: Agreed that each company will instruct its branch point managers or divisional representatives that all cases of tire-merchandising irregularities of which they have knowledge or which are reported to them are to be brought up at divisional point meetings for consideration; are to be recorded in the minutes with a statement of what each complaint involves and what action or lack of action, by the meeting, resulted.

Montreal: Agreed that conditions in the Montreal district are such as to require meetings fortnightly with the tabling and minuting of all complaints.

Trade-ins and Change-overs: A London meeting having asked definitions of these, it was agreed that London should be informed that a change-over involves the replacing of new tires with other new tires.

..."

(Exhibit 2149)

Also on June 4, 1940:

"Branch Point Meetings: It was noted that at many points these were not being held regularly due to the fact that one or more companies frequently were unable to have representatives present to participate in decisions. It was agreed that companies would instruct their representatives at such points to keep in touch with the representatives of other companies, even though meetings might not be held.

..."

(Exhibit 2143)

Matters discussed at these branch meetings included a large number of regional problems that could be handled by branch managers within the boundaries of industry agreements. An instance of this is a meeting which was held in Montreal on December 5, 1938:

"Champlain Automobile Club Ltd:

This Club is asking Tire Companies to sell them direct (through the Eastern Co-Operative Corporation to be organized in January) at dealer prices, with 10% extra. They claim to have a thousand members in the Eastern Townships for whom they want to buy Tires.

All Companies agreed not to sell them direct, and also promised to do what they could to prevent their dealers selling them.

The meeting felt that Head Offices should use pressure on their Branch Managers to see that these promises were kept. The feeling was that if Tire Companies or dealers sold this organization direct, similar requests would be made by the Royal Automobile Club, and other such organizations, to buy for their members also. All such sales should be between the car owner and the dealer, and not between the dealer and the Auto Club or co-operative buying organization.

Montreal Tramways Company

Firestone said they understood the maximum terms to the Montreal Tramways Company were dealer billing less 10%, and asked if anyone was selling at a higher discount. All Companies stated 10% was the maximum allowed by them.

. . ."

(Exhibit 2738H)

Minutes of branch meetings were forwarded to the head offices of the Tire Companies by the recording secretary for the information of the company officials, and sometimes contained recommendations for the attention of the Tire Group. The following is from a branch meeting held in Ottawa on June 20, 1939:

". . .

The meeting day for local meetings to be the 1st, Monday of each month - next meeting July 3rd, 1939.

RE: GOVERNMENT DEPARTMENTS, ETC The Meeting recommends that the Federal and Quebec Provincial Governments, Counties and municipalities be placed on consumer net list less 10/10/2% - no trade in.

No decision expressed on Ontario Provincial Government as all purchases are made in Toronto.

. . ."

(Exhibit 2739E)

In 1939 the Tire Companies set up a "commercial tire programme" which involved agreement upon preferred prices on passenger and truck tires to commercial users. This program was restricted to enumerated localities where, apparently, competition at the dealer-consumer level was resulting in abnormal discounts and trade-in allowances. The program was described generally in the minutes of a sales managers' meeting of June 1, 1939:

". . .

Tire Merchandising: There was a long discussion of discounts and trade-in-allowances that are being accorded at certain points to commercial accounts. It was agreed that for named points there should be issued preferred tire price-lists for truck tires and passenger-car-size tires, when sold for commercial use, which prices are to be 15% below present consumer-list prices for tires and 20% below for tubes; and, in addition there may be given a trade-in allowance, for old tires replaced, as shown by a scale of prices to be prepared on the basis of 7½% off such commercial tire and tube prices.

. . ."

(Exhibit 2153)

The program was further elaborated at subsequent meetings and was put into effect. Branch meetings at this time were in large part concerned with this program. The following excerpts from a branch meeting held in Windsor on July 28, 1939 are typical of the discussions and activities that took place:

"Mr. Marshall (Firestone) raised the question to Mr. Irwin (Goodyear) regarding a trucking customer in Wheatley, getting a price from Dealers Jackson and Nelson on the Preferred Commercial Price List. Customer came to Windsor and bought two tires 32-6 and Tubes for One Hundred and One Dollars (\$101.00) and price should have been One Hundred and Five Dollars (\$105.00). Mr. Irwin felt that price cutting did not attract the customer to Windsor but the fact that he got a little longer time to pay. However, Mr. Irwin advised he would look into the matter and bring it up at the next meeting.

Mr. Hughes (Dunlop) expressed full appreciation and co-operation felt by his Dealers and Truckers, and feels the program is working to satisfaction.

Mr. Preston (Seiberling) brought up a Sale of Goodyear Tires to Mara's Bread Co., but it was outlined that they were sold from the Preferred Commercial Price List by Mr. Irwin. This was satisfactory."

(Exhibit 2741G)

The holding of branch meetings appears to have been discontinued during the war. The minutes of a sales managers' meeting on February 25, 1946 contain the following item:

"TRANSPORT OPERATORS AS TIRE DEALERS: The opinion was quite generally held that there are numerous symptoms indicating that the price structure on truck tires is beginning to break down. It was stated, for example, that many synthetic dealerships are being set up by large transport operators for the purpose of enabling them to buy tires at dealers prices for use in their transport operations. There are also indications that some dealers are being subsidized, particularly in Montreal.

It was agreed that these developments should be checked before they have gone too far. It was thought that many of them took place without the district and branch managers concerned knowing of them and it was suggested that if meetings of these district and branch managers were resumed, they would all be kept more fully informed on such developments in their territories.

It was agreed therefore that all companies would notify their branch offices and district managers that transport companies are not to be sold as dealers and that any such arrangements now in effect are to be withdrawn. They would also be advised that regular meetings

of the district and branch managers of the several tire companies should be held. (Italics supplied)"

(Exhibit 2233)

The evidence indicates that the branch meetings were in part, at least, resumed. The minutes of one branch meeting held at Winnipeg on June 13, 1947 have already been referred to at page 284, others are about to be referred to and the general practice is confirmed by correspondence quoted in Chapter 6.

As mentioned previously, branch managers had no authority to deviate from standard industry practices, their meetings being held for the purpose of implementing head office decisions and of settling local conditions within the limit of their authority. In at least one instance a group of regional representatives went beyond its jurisdiction and was corrected by the head office officials of the Tire Companies. In the summer of 1947 a Montreal meeting agreed, with one company representative dissenting, that trucking companies could be appointed as dealers in small centres where the size of the locality did not justify the appointment of a regular tire dealer. The resolution was subsequently vetoed by the managements of certain of the Tire Companies. On this occasion L. E. Levey of Dunlop wrote a circular letter to the other sales managers dated June 10, 1947 with reference to these branch meetings:

"In reference to your letter of 9th. June in connection with Montreal District Managers' Meeting and the agreement by all companies except yours (Firestone) that a trucking company in a small town will be appointed as a dealer and receive representation in such town, I cannot help but feel that even without waiting for confirmation from our Montreal end I am extremely safe in stating that our Company Representatives at Divisional points are not granted the authority to change the policies of our company in such a manner as is indicated in your letter.

This is the third or fourth time that Montreal Division, on their own or with the help of another Divisional Manager, apparently decided to make rules and regulations to suit themselves, and it would seem to me that it is about time that the Head Offices of the Rubber Companies notified their District Managers that the general rules are made by the Head Office Executives and Divisional Minute Meetings are not for the purpose of officially breaking rules that are made or making new ones but rather for the benefit of assisting in the operation of what rules are made by Head Office.

We have written our Montreal Division regarding the inclusion of our company in the agreement as noted in the second paragraph of your letter. I don't know what system other companies have but ours does not permit the inclusion of this type of account as a dealer with dealer bonus regardless of what might be agreed upon in Montreal."

(Exhibit 2738B)

Then, on June 20, 1947, C. B. Cooper of Goodyear circularized the other Tire Companies with copies of his memorandum to the Montreal branch which was as follows:

"We are advised that at a Montreal District Managers' Meeting of June 9, all company representatives, with the exception of Firestone, agreed that where they had a town with no dealer they would appoint a trucking company as their dealer and give him a franchise and earned bonus for volume.

This is not in line with our distribution policy, as you know. It is one of those practices that could not possibly be controlled and means nothing more than granting Dealer prices and bonus to a consumer buyer. Such a practice cannot be condoned.

We have already had reverberations from other company General Sales Managers and I think that they are justified. We want you to go on record with the other company representatives that we are not agreeable to any such understanding.

I would like a report from you after you have contacted other company representatives."

(Exhibit 2498f)

M. C. Moyer of Gutta Percha wrote the company's Montreal branch on June 24:

"Since writing you on June 18th, commenting on the Minutes of the above meeting, we have received copies of two communications one from Goodyear and the other from Dunlop, the former to their Montreal Branch and the latter to Firestone.

. . . These two communications came as a distinct surprise to us as certainly in the copy of the Minutes of the meeting of June ninth, which you attended, there was no suggestion of any such resolution. We would be interested in knowing whether such a resolution was passed, with only Firestone dissenting, and, if so, why it did not appear in the Minutes of the meeting.

. . .

Possibly, before you receive this letter, you will receive from competitive branch managers, some intimation of the furor this matter has already caused. Undoubtedly, this pronouncement will be brought up again for review at a regular or special meeting of the Montreal Branch Managers. If it is again brought up for discussion, we would ask you to kindly withdraw any support to such a motion on behalf of this company, and in fact place yourself on record as being opposed to any such policy. We would also, as mentioned before, be interested in knowing how this resolution came to be adopted at the meeting and was not reported in the Secretary's Minutes of the Meeting of June 9th."

(Exhibit 2498d)

And on June 26 M. C. Moyer replied to C. B. Cooper of Goodyear to the effect that Gutta Percha was heartily in accord with Goodyear's views upon the matter and said:

". . .

While we are on the subject of establishing fleet owners as tire dealers and while we appreciate fully your stand in the matter, we cannot help but recall two separate circumstances, where, according to all reports, your company has already adopted the policy that you and we are opposed to in so far as the Province of Quebec is concerned. I am referring now to the reported establishment of Rasmussen Limited in Regina, as an accredited Goodyear Tire Dealer and the Comox Lumber Company on Vancouver Island.

". . ."

(Exhibit 2498a)

Mr. Moyer was asked at the hearings whether he got any explanation from Mr. Cooper respecting his activities in Regina or British Columbia and he replied:

"A. Yes. Mr. Cooper called me immediately he received the letter. I recall this rather distinctly because he twisted my tail a bit, so I took a certain amount of satisfaction in twisting his. So he called me immediately. He said, I just got your letter. I am amazed, simply amazed. What could I say? He said, I shall check into the situation immediately."

(Evidence p. 6841)

In view particularly of the fact that the secretary of the branch meeting was an employee of Goodyear, it is not unreasonable to infer that the omission from the minutes was related to the warning against including references to price discussions in minutes, which was contained in the memorandum of C. B. Cooper of Goodyear which is referred to on page 353.

Chapter 5 - Industry Agreements and Arrangements Relating to Original Equipment Tires and Tubes

A. General

As already indicated, sales to original equipment manufacturers account for the smaller portion of the total Canadian production of tires and tubes. Table VI on page 209 shows that during the first eleven months of 1947 and 1948 shipments of passenger, bus-truck and implement and tractor tires by the Tire Companies to original equipment manufacturers accounted for slightly under 40 per cent of the total shipments of these types of tires made by the Companies on the original equipment and replacement markets during those periods. The corresponding proportion for tubes appears to be somewhat higher but considerably under 50 per cent. During the relevant period the three large Canadian vehicle manufacturers, namely, General Motors of Canada, Limited, Ford Motor Co. of Canada, Limited and Chrysler Corporation of Canada, Limited, have accounted for the bulk of the purchases of original equipment passenger and bus-truck tires and tubes. In turn, most of these purchases were made from Goodyear, Firestone and Dominion, whose combined original equipment sales account for well over 80 per cent of all sales of tires and tubes to vehicle manufacturers in Canada. Substantial original equipment sales have been made by Goodrich and Dunlop whilst the combined original equipment sales of Seiberling, Gutta Percha and General have amounted to less than 5 per cent of the industry total of such sales.

It will be remembered that there is no difference in quality between original equipment and replacement tires except that no secondary line of tires is sold on the original equipment market. Testifying on this point one witness said:

- "Q. On this question of quality, am I right in assuming that the same tires go into original equipment as those sold in the replacement field, and that they are the (first line) tires?
- A. The 100-level. The other types, the premium price, would be optional at an extra price.
- Q. But the 100-level tire that goes into original equipment is the same as is sold on the replacement market?
- A. Exactly. We have no specifications for two types of tire of the same type. We don't know where the tire is going. It may go for export, it may go to Oshawa or to Windsor, or it may go to Vancouver or Alaska, we don't know where the tire is going when it is built. That tire, that type, is the only tire we make."

(Evidence p. 6886)

The range of sizes of tires sold on the original equipment market is not as extensive as that of the replacement field, as tires sold for original equipment purposes are limited to the more recent popular sizes.

This is especially the case with passenger tires, which are sold as original equipment in less than half the number of sizes used on the replacement market. Then again, even within these sizes, sales are concentrated in a few of them; during the first six months of 1948, for instance, out of a total of 423,768 passenger tires sold by the Tire Companies on the original equipment market, 310,299 of these tires were in the 670-15 and 600-16 sizes.

Also, as already noted, original equipment prices bear no direct relationship to replacement prices, original equipment base prices being as a rule much lower than ordinary dealer billing prices. There are several reasons for the Tire Companies' interest in pushing original equipment sales in spite of the comparatively low returns netted on these sales. One reason is that they help in maintaining the Companies' production runs during slack replacement sales periods. Another is the advertising value which a company derives from having its brands of tires on new vehicles. Because of this and because vehicle owners who have had satisfactory service from their original equipment tires will tend to replace them with the same brands, original equipment sales tend to promote the more remunerative replacement sales.

The evidence indicates that three classes of prices of original equipment tires and tubes have been in effect in the tire industry:

1. Confidential prices to certain large motor vehicle manufacturers;
2. "Base" or "Special" prices to lesser original equipment manufacturers;
3. "Preferred" prices to another group of, generally speaking, still smaller manufacturers or assemblers of special types of vehicles or equipment like trailers or logging equipment.

The first class of price applying to the largest manufacturers, such as General Motors, Ford and Chrysler, has been arrived at by crediting the account with a confidential rebate or discount from the "base" or "special" prices at which the tires were generally invoiced. Information respecting the amounts of these confidential discounts has generally been confined to a few top officials in each company. The occasions on which "base" or "special" prices were quoted without discount are in doubt and this matter will be reverted to later on. The manufacturers or assemblers entitled to "preferred" prices were set out on industry lists which as will be seen were the subject of close and continuing attention. Although the terminology might suggest the contrary, the "base" prices are lower than the "preferred" prices, the "preference" being in relation to dealer billing prices.

B. Nature of Arrangements

Arrangements among tire manufacturers with respect to original equipment tires and tubes were arrived at and carried out in the same general way as were the arrangements with respect to replacement tires and tubes. At the meetings of general managers and of sales managers which have been referred to in the preceding Chapters, original equipment tire and tube matters were also discussed. Again, correspondence through the Association office between meetings supplemented the work done at meetings. A special committee known as the Original Equipment Tire Pricing Committee also functioned from time to time. Association officials acted as secretaries at meetings, prepared and circulated certain price lists and classified lists of customers, and generally acted as a clearing house for the interchange of information.

The matters discussed in these ways included:

1. Establishment of "base" price lists for sales of original equipment tires and tubes to the larger vehicle manufacturers;
2. Establishment of "preferred" price lists for smaller manufacturers or assemblers;
3. Establishment of prices of special sizes or types of tires not included in current lists;
4. Terms of sale and shipment;
5. Lists of manufacturers or assemblers entitled respectively to be quoted the prices on the price lists referred to above.

The succeeding sections will describe the activities of the Tire Companies in respect of the above matters during the period under review.

C. Prices for Original Equipment Tires and Tubes

(a) Prior to December 1941

At the end of the year 1936 there were two original equipment price lists in the tire and tube industry for passenger and bus-truck tires and tubes: the "Special Manufacturers Net Prices" list, which was the industry's basic price list for original equipment tires and tubes and the "Preferred Manufacturers Net Prices" list, which applied to equipment manufacturers of lesser importance and was at that time 10 per cent higher than the "Special" list. That agreement had been reached in connection with these matters is indicated by the following excerpt from the minutes of a general managers' meeting of October 8, 1936:

"Equipment Tires and Tubes: Agreed that equipment tire and tube prices effective October 7th, 1936, shall continue effective to March 31st, 1937, subject, however, to the next following paragraph.

...
Distribution of Prices: Agreed that each General Manager will instruct his organization as follows:

- (a) That equipment prices set for car manufacturers on the Special List shall in no case be communicated to accounts on the Preferred List, the prices to which are 10% over Special List prices;
- (b) That where a vehicle manufacturer requires only one or a limited number of tire and tube sizes to equip his production he shall be quoted Preferred List prices for only those sizes that are suitable as original equipment for the vehicles he produces;
- (c) That Special List equipment prices shall be quoted only to accounts on the Special List and Preferred List prices are to be quoted only to accounts on the Preferred List;
- (d) Accounts not listed will be quoted and sold at consumer list prices.

..."

(Exhibit 2196)

On October 27, 1937 representatives of the Tire Companies agreed to change the name "Special" list to that of "Base" list, to change the spread between the two from 10 per cent to 15 per cent and generally to reaffirm restrictions on price quotations set forth above in the minutes of the meeting of October 8, 1936 "all the foregoing to be effective only at the next equipment price-change" (Exhibit 2180).

The 15 per cent spread between the two lists was further increased to 25 per cent at a meeting of sales managers on May 3, 1938 (Exhibit 2172). But on a directive from the general managers (Exhibit 2169) the sales managers reviewed the matter at a meeting on June 7, 1938 and agreed that the differential of 15 per cent should continue until the next general change in equipment prices, when it should be raised to 25 per cent, settling in the meantime the list of "Preferred" accounts (Exhibit 2168). The next general change in original equipment prices was effective September 1, 1938 when "Base" list prices were reduced. At the meeting held August 29, 1938 at which this was effected, the general managers settled the preferred accounts list and also the differential between "Base" and "Preferred" prices:

". . .

Preferred Equipment List Tire and Tube Prices will be 15% over Base equipment prices for truck and commercial sizes and types, and 25% over Base equipment prices for passenger car sizes and types.

". . ."

(Exhibit 2165)

New "Base" and "Preferred" price lists for original equipment passenger, bus and truck tires were distributed to all the Companies by the secretary of the Association to be effective July 16, 1940:

"THE RUBBER ASSOCIATION OF CANADA
210-11 COMMERCE AND TRANSPORTATION BLDG.,
TORONTO

July 19th, 1940.

Dear Sir:

Enclosed please find Manufacturers' Base and Preferred Prices, effective July 16th, 1940. The distribution of these has been delayed owing to the illness of Mr. Hannay. I understand Mr. Grainger of Goodyear has sent complete copies of the price change to each company, but we are also putting it through the Association office in the usual way."

(Exhibit 2013B)

This followed the decision by general managers already referred to at the meeting on June 27, 1940 which appears to have been directed particularly to replacement prices but which would carry implications also in the original equipment field:

"Budget Taxes and Tire Prices: It was agreed that, to take care of the increase of poundage excise tax on tires and tubes to 5¢ per pound and partially take care of the 10% tax imposed on imported manufacturing materials, there would have to be an increase of 10% for tires and of 3% for tubes on the present low prices of these articles. The following message was sent by companies to their branches:

'Effective opening business June 26th all list prices on passenger, truck, motor-cycle casings advanced 10%, all tubes 3%. This advance due to increased costs raw materials and increased poundage-excise, war exchange and other taxes. New price lists being mailed.'

". . ."

(Exhibit 2141)

These original equipment prices were still in effect when price control was imposed by the Government in the fall of 1941. In a memorandum in early 1947 the secretary of the Association stated:

"Current original equipment tire prices were established in July 1940. In accordance with industry custom, these prices were reviewed in July 1941, but although costs had risen considerably during the year, it was decided, in view of the unsettled conditions then prevailing and the uncertain future, to postpone a revision of prices until January 1942 in the hope that by that time conditions might be more stable and the outlook clearer. As a result of this decision, the July 1940 prices were in effect when the Wartime Prices and Trade Board froze prices as at September 15th to October 11th, 1941.

..."

(Exhibit 2847F)

With reference to ordinary original equipment sales, the industry established lists of spare tire prices which were changed from time to time as replacement tire prices changed and which finally became inapplicable early in the control period when the Government prohibited car manufacturers from placing spare tires on vehicles.

The spare tire was originally an optional piece of equipment which the car or truck dealer purchased on the replacement market and added to a passenger car or truck if the purchaser so desired. When the policy of adding spare tires and tubes at the automobile plant became widespread after 1930, the tire manufacturers, to make up for the business thus lost in the replacement market, established prices for spare tires which were higher than ordinary original equipment tire prices and roughly comparable to the lowest prices in the replacement field. These prices were known as the "Manufacturers' Spare Tire Prices."

The usual procedure adopted by the industry was to bill the car manufacturer for an assembly of four tires and tubes on the basis of original equipment prices and the fifth tire and tube on the basis of spare tire prices, although in some instances to simplify bookkeeping the prices were averaged and the manufacturer was billed for an assembly of five tires and tubes. In this connection the following is recorded in an attachment to the minutes of a meeting of representatives of Tire Companies on October 27, 1937 and subsequently was contained in statements of terms (Exhibit 2013E) applicable to original equipment sales:

"..."

SPARES: All tires used as Spares for driveaways or Spare Tire Equipment mounted on vehicles will be reported monthly and billed on the basis of the Manufacturers' Spare Tire Prices.

..."

(Exhibit 2180)

Special price problems arising from time to time which required minor amendments of or additions to any of the various current price lists were handled by correspondence through the Association office or by special meetings, including meetings of the Original Equipment Tire Pricing Committee.

Such problems arose most commonly with regard to new sizes required by vehicle manufacturers or with regard to special types of tires, e.g., white sidewalls, extra plies, special type of construction and special tread designs for particular uses. Changes in price lists have also been necessary because of the "groupings" and "combinations" of tires and tubes which were carried out in the original equipment field.

In making price decisions in matters of this sort the technical problem has been one of finding the right place in the general price structure for the particular tire, having regard to prices of tires already in the range. Consideration of the prices of certain special types of tires is indicated in the minutes of a general managers' meeting of October 4, 1937:

". . .

Differentials: It was agreed that white-sidewall casings will be priced 20% over black-sidewalls.

The following recommendation for differentials in equipment prices between first line casings and special types will be studied:

D I F F E R E N T I A L				
	Akron		Canada	Canada
	now		now	suggested
1. Lug Tires	5% over A.W.T.		Same as A.W.T.	5% over AWT
2. Studded Tires	5% over A.W.T.		Same as A.W.T.	Same as AWT
3. H.D.Truck	10% over H.D. Air	}	15% over H.D. Air	10% over HD
Air-wheels	A.W.T.)		A.W.T.)	Air. A.W.T.)
4. Stop-Start				
Tires	-		15% over Akron	15% over Akron)
5. Dump Truck	2 Extra Ply 15% up)		20% up for 2 extra ply)	15% Increase
6. Y.K.L.	25% over A.W.T.		25% over A.W.T.	25% over AWT
7. Sure-Grip				
700-20,				
900-24	5% over A.W.T.		Same as A.W.T.	5% over AWT

". . ."

(Exhibit 2181)

Following this extract was a key to the various brand names used, so that each company could identify its own brands which corresponded to the Goodyear brands in the lefthand column.

The following undated memorandum apparently referring to the above minutes was found in the office of the Association at the time of this investigation:

"NEW EQUIPMENT TIRE PRICES

Please note the following:

1. According to the arrangement made some time ago, the new prices are retroactive to October 26th, 1937.
2. The new prices are to continue to March 31st, 1938.
3. The new prices on special types of casings are worked out on differentials over the regular first line.
4. Goodyear names are used to indicate the special type casings because there is no Association name for each of these classes of tires. Companies should be able to identify their special types with the Goodyear names. The minute of October 4th will assist in this.
5. Freight on shipments to Ford, Winnipeg or Vancouver and General Motors, Regina, is equalized at Windsor, i.e. on shipments to Ford, Winnipeg, the difference between the Tire Company's Plant and Windsor, the Tire Company's Plant and Winnipeg is charged. The same applies to Ford, Vancouver and General Motors, Regina.

A. B. Hannay,
Manager & Secretary"

(Exhibit 2095)

The arrangement as to advance notice to other companies before one company announced a new tire to the replacement trade and the public has been referred to at page 236. The arrangement in the original equipment field was different as appears from the minutes of the general managers' meeting of October 4, 1937:

". . .

Further, when a new tire is brought out for original equipment, the Association office shall be notified by the producing tire company and the Association office shall notify all the other tire companies.

". . ."

(Exhibit 2181)

The Original Equipment Tire Pricing Committee played an important part in establishing prices both in specific instances and on general price revisions. The Committee was composed of minor officials from various of the tire manufacturers. A sales managers' instruction, e.g., given at a tire meeting on March 14, 1939 (Exhibit 2158) decided that the Pricing Committee should consist of representatives of Goodyear, Firestone, Dominion, Dunlop and Goodrich. Generally speaking, this Pricing Committee had no authority to establish final prices but once the general or sales managers had approved a general increase or reduction or had settled the basis of a new price the Committee was convened,

usually through the Association office, and it became the Committee's function to work out the detailed prices. In the case of a new size or type of tire, it had to be fitted into the general price range. Comparison with United States original equipment prices played a special part in all such decisions since vehicle manufacturers with parent companies in the United States were closely in touch with United States prices and ready to import where it was profitable to do so. Because the Committee was composed of certain individuals of long and broad experience in the original equipment field, it was relied upon by the top management for suggestions in point of detail concerning the prices, not only of specific tires and tubes but of the whole range.

In his evidence before the Commission T. M. Ponton, an employee of Dunlop, who was a member of the Committee for many years said:

"A. Well, as I say, this committee would be together and they would sit down and say, here is the American figure and here are the old Canadian figures, prices of so-and-so, and they have to reduce them. Therefore, we feel that the price should be so-and-so -- well then, perhaps Firestone might turn around and say, well our figures don't fit in with that. And another company, Dominion, might have something to say along the same lines. Then we would just get a general discussion and out of it comes a base price."

(Evidence p. 7398)

Later in his evidence, explaining the reason for the existence of the Committee, he said:

"A. Well you see, there are various lines and grades of tires. And when you get that picture presented to you, when you have a first line and second line and third line tire, then you have got what you call a super-tire, a higher priced tire beyond the one hundred percent level, and then you have got off-the-road tires and you have got logging tires and you have stop-start tires, all these taking different ranges of prices -- well, for the executive members to sit down and attend to that chore, they are not interested in that detail, so they turn it over to the committee. And it is our responsibility to sit down and study that thing and iron it out. And if we see anything that seems to be out of line, then we record our thoughts and let them know just what it is all about. They may accept the recommendations that we have to offer or they may say that we are all wet, and give reasons for it - because in their minds they have some other policy which we as a pricing committee weren't aware of . . ."

(Evidence pp. 7405, 6)

The nature of the Pricing Committee's work is indicated in the following letter sent to Tire Companies on January 13, 1939 by the secretary of the Association:

"Please consider the following in effect:

	<u>MANUFACTURERS'</u>			<u>EXPORT PRICE</u>	
	<u>Domestic</u>	<u>Price</u>		<u>(A)</u>	<u>(B)</u>
	<u>Set of 4</u>	<u>Case</u>	<u>Tube</u>	<u>Set of 4</u>	<u>Set of 4</u>
<u>TRUCK AIRWHEEL</u>					
700-16 8-ply	\$60.64	\$13.68	\$1.48	\$51.62	\$51.62
<u>TRUCK BALLOON</u>					
825-20 12-ply A.W.T.	161.12	37.04	3.24	141.60	141.60
900-20 12 " " "	191.44	43.99	3.87	162.92	162.92
<u>TRUCK BALLOON</u>					
750-17 8-ply Studded Sure-Grip)	74.72	16.00	2.68	63.78	70.56
1050-20 12-ply Lug	256.72	59.02	5.16	218.48	218.48

The committee that deals with equipment prices requests that companies should make their requests for manufacturers' original equipment prices on tires and tubes through the Association office in order that all companies may be informed of any changes or additions. They also request that where a company ask for an equipment price on a tire or tube not previously produced in Canada, that they should submit the equipment price of their parent American company to enable proper computation to be made for Canadian prices."

(Exhibit 2733)

Again in April 1939 the work of the Committee is illustrated in a circular letter dated April 18, 1939 written by I. G. Needles of Goodrich to the other Tire Companies and the secretary of the Association:

"Mr. Stafford brings up a point regarding 6.00-16 Store Door type of tire, and Commercial type, as it has been discussed with the Manufacturers' Pricing Committee."

The present pricing structure on these three tires is as follows:

	<u>Can. Price.</u>	<u>Amer. Price</u>	<u>% Can. over Amer.</u>
Silvertown	\$24.50	\$19.00	29%
Store Door	24.90	22.85	9%
Commercial	26.30	22.30	18%

..."

(Exhibit 2688)

After giving the company's reasons for a suggested increase in the Store Door type tire, Mr. Needles concludes:

"Perhaps you would like to study this with your manufacturers' representative and advise Mr. Hannay (Rubber Association Secretary) of your viewpoint, so that he can reflect it to the Pricing Committee

for decision as to what action is desired, before we print the price list which is scheduled to go through soon, in connection with the grouping of tires."

(Exhibit 2688)

The following case illustrates how a simple question of policy arising between meetings could be cleared by the Association office through correspondence and without the necessity of a meeting. On October 5, 1939 A. B. Hannay, Secretary of the Association, wrote all general managers:

"I am informed that the existing base prices for tires for car manufacturers in the United States have been extended for the next quarter, that is until December 31st, 1939. It is suggested that the same action should be taken in Canada.

Will you please let me hear from you."

(Exhibit 2016B)

Upon receiving an answer from one of the general managers agreeing to the proposal and suggesting further that an exchange factor should be applied to export equipment prices (Exhibit 2016D), Mr. Hannay wrote again to the general managers relaying the added suggestion (Exhibit 2016E). Having heard from all, Mr. Hannay wrote to each general manager on October 21, 1939:

"EQUIPMENT TIRE PRICES FOR CAR MANUFACTURERS

In an Association letter of October 5th it was proposed that existing equipment base tire prices for car manufacturers should be extended to December 31st, 1939, and by a letter of October 14th, it was proposed that an exchange charge should be applied to export equipment tire prices.

Either by letter or telephone all companies have agreed to each of these proposals. Effective Monday, October 23rd, and thereafter until December 31st, 1939, unless a change is agreed upon prior to the latter date, 10% is to be added to the charge for export equipment tires. The domestic base equipment tire prices will continue until the end of the year."

(Exhibit 2016A)

Arrangements among the four companies primarily interested in 1937 in supplying implement and tractor tires and tubes for original equipment purposes, namely Dominion, Goodrich, Goodyear and Firestone, related to the prices of tires and tubes made in Canada and of tires and tubes imported from their parent companies in the United States. The following is an excerpt from the minutes of a meeting attended by representatives of these four companies on June 21, 1937:

"It was agreed that tractor manufacturers on the approved list or their Canadian branches or distributors, requiring imported sizes of farm tractor casings and tubes for original equipment, shall be sold only on bona fide orders and such orders are to be placed through the Canadian head office of the Canadian tire company. Such head office is to arrange for delivery from their parent factory for billing and shipping direct to the Canadian customer at the point designated and bill at equipment home-market prices. The customer is to clear each shipment through customs and pay all expense in connection with each importation.

The meeting recommended that companies shall agree that there shall be no consignment stocks of imported sizes of farm-tractor casings and tubes established at any point in Canada for equipment purposes.

Further recommended that Canadian tire company branches, with stocks of service or replacement farm-tractor casings and tubes, are not to be drawn upon for such casings or tubes for use as original equipment.

The above is not to apply to farm-tractor 600-16 and 1125-24 casings and tubes, which are sizes made in Canada.

The manufacturers' prices of Canadian made tractor casings and tubes are as follows:

	<u>Casing & Tube</u>	<u>Casing</u>	<u>Tube</u>
600-16 4-ply Tractor	\$ 6.70	\$ 5.85	\$.85
1125-24 6-ply "	\$36.12	\$30.90	\$5.22"

(Exhibit 2185)

For some time previous to 1946 only one class of implement and tractor price list existed for original equipment and accordingly only one list of recognized purchasers. As in other tire fields, once a decision was reached to change prices, the relevant tire pricing committee worked out the details of prices. For example, the following occurred in May 1939:

"M I N U T E S

ORIGINAL EQUIPMENT TIRE PRICING COMMITTEE MEETING

Toronto, May 8th, 1939.

A meeting of the Original Equipment Tire Pricing Committee was held at 2.30, Monday, May 8th, 1939.

There were present: Messrs. F.H. Stafford, Goodrich; A. E. Grainger, Goodyear; R. I. Raycroft, Firestone; P. M. Irwin, Dominion; T. M. Ponton, Dunlop.

The following Original Equipment prices were made effective May 10th, 1939:

TRACTOR EQUIPMENT CASING AND TUBE

<u>Size</u>	<u>1 Case & Tube</u>	<u>1 Case</u>	<u>1 Tube</u>
500-15 4-ply	\$ 4.67	\$ 4.00	\$.67
600-16 4-ply	5.41	4.64	.77
600-20 4-ply	8.18	7.30	.88
750-16 4-ply	10.52	9.40	1.12
750-18 4-ply	10.82	9.62	1.20
750-20 4-ply	11.69	9.77	1.92
1125-24 6-ply	33.35	29.07	4.28
1125-28 6-ply	37.00	32.30	4.70
1275-24 6-ply	41.86	36.04	5.82
1275-28 6-ply	47.70	41.24	6.46

GROUND GRIP GRADER

	<u>Set of 4</u>	<u>Case</u>	<u>Tube</u>
1050-24	\$ 185.96	\$ 41.46	\$ 5.03

..."

(Exhibit 2155)

The price structure established in the ways described above and supplemented by agreed terms and classified lists discussed in later sections was frozen as to ceilings by price control at the end of 1941.

(b) After December 1941

On December 1, 1941 government price control came into effect prohibiting sale of civilian goods at prices higher than the highest prices in effect between September 15 and October 11, 1941. Maximum original equipment list prices thus became the prices shown on the price lists of July 16, 1940. In a memorandum in early 1947 already referred to the secretary of the Association said:

"..."

In view of the cost increases which had taken place since July 1940, the industry felt justified in asking for relief and on January 2nd, 1942, submitted a brief requesting authority to increase prices of original equipment tires and tubes. Upon the facts presented in this brief the Board saw fit to authorize price increases which were put into effect on February 1st, 1942. Shortly afterwards, however, the Board reversed its decision and the industry was compelled to revert to the July 1940 prices.

..."

(Exhibit 2847F)

Maximum prices remained in effect for civilian goods until price control ended in 1947. The industry price list of February 1942 which provided for substantial increases in price apparently remained in effect for sales for military vehicles not subject to the price ceiling. The effect of this was limited by the fact that such sales were subject to government audit and profit control (Exhibit 2847C).

Until 1945 relatively few tires were available for civilian use and their production and sale were subject to rigid governmental control. From 1945 until 1947 the industry was still subject to close control but more and more tires gradually became available for civilian use. Tire rationing ceased January 1, 1946 and the manufacture of motor vehicles for civilian use was resumed in quantity. Gradually greater scope for industry freedom of action was created.

On September 4, 1945 I. G. Needles, then General Manager of Goodrich's Tire Sales Division, wrote to the secretary of the Association with reference to original equipment prices:

"We have a collection of prices which were issued at various times for manufacturers and we think that these should now be brought up to date and new lists issued since manufacturers' prices are again becoming a matter of common reference.

This should be done, in our opinion, through the Association and, therefore, we should like to start the ball rolling by asking you to prepare and supply us the following:

1. Complete list of manufacturers' prices on special list for passenger car tires and tubes and truck tires and tubes.
2. The same information on manufacturers' special (probably means 'preferred') list.
3. Manufacturers' equipment prices on farm service and implement tires and tubes.
4. Manufacturers' prices on airplane tires and tubes.

While we have the same list that has no doubt been issued to everyone else, there have been revisions and corrections and we think the Industry ought to bring this whole group up to date and issue copies to everybody so that everybody has assurance that the same prices and terms are being quoted."

(Italics supplied)

(Exhibit 2036)

Acting apparently on this suggestion the secretary compiled a consolidation of price lists which was reviewed by sales managers at a meeting of September 24, 1945 (Exhibit 2239) and distributed by the secretary to all the Companies on October 22, 1945 (Exhibit 2035). These lists were, of course, in substance a repetition of the agreed lists of July 16, 1940. During the control period price ceilings generally remained unchanged.

On the eve of de-control and before it was announced, the Wartime Prices and Trade Board on March 18, 1947 authorized the Tire Companies to negotiate with their customers for increased prices on original equipment tires and tubes, subject to Board approval of the negotiated prices (Exhibit 2213). The Tire Companies, in pursuance of such authorization, then decided on lists of increased prices which they would submit to their customers for acceptance. This project had not been completed when, at the beginning of April, Rubber Control went out of operation and price ceilings were lifted on all tires and tubes (except farm tractor and implement tires on which ceilings continued until September 15, 1947).

The price lists thus arrived at, which were issued around the end of March and were effective early in April, then became the basis for quotations in the original equipment field, since Wartime Prices and Trade Board approval was no longer necessary except for tractor and farm equipment tires.

On June 6, 1947 R. I. Raycroft of Firestone wrote to his parent company in the United States enclosing a list of confidential original equipment tire prices to Ford and General Motors:

"Attached is a list of Ford and General Motors Confidential prices. Page 1 shows Passenger tires in sets of five for Ford and General Motors. The base price of the Rubber Association, which applies to all manufacturers including I.H.C., (International Harvester) shows the old and new price and the Spare.

Page 2 shows the Truck tires for Ford on a basis of five tires, Spare included in the price; General Motors based on four tire price, the Spare extra and the Rubber Association price is shown along with the Spare.

Page 3 shows the Spare tires of Ford only, and the Rubber Association base price. We do not have any Spare prices with General Motors at the present time as there is no demand.

I am also attaching hereto our Tractor and Implement tire price list used by the industry. As you know, we have increased our prices to Ford, effective May 22nd, to the same level as Akron, on Tractor tires only."

(Italics supplied)

(Exhibit 2611a)

In the summer of 1947 prices for white sidewall tires were agreed upon by the Companies as has been described in Chapter IV (see page 239 and following). From the files of Dunlop and Goodyear were received identical single sheets entitled "SUGGESTED MANUFACTURERS' PRICES" (Exhibits 2530, 2420) dated July 30, 1947. They set out prices for the same sizes and plies of white sidewall tires that are referred to in the sheets entitled "SUGGESTED REPLACEMENT PRICES" that are referred to on page 241 and it is a reasonable assumption that they were distributed as a result of the agreement mentioned.

After March 31, 1947 the original equipment tire pricing committee met as it had done previous to the control period, when special problems arose. The following circular was sent to all general managers by the Association secretary on July 4, 1947:

"RE: MANUFACTURERS PRICES

At a meeting of the Original Equipment Pricing Committee held on July 4th, the following prices were recommended for adoption after approval by the General Managers:

700-15 8 ply H.D. COMMERCIAL

	<u>Casing</u>	<u>Tube</u>	<u>Assembly</u>
BASE	17.48	1.46	18.94
PREFERRED	20.10	1.68	21.78

BASE: LOGGER CONSTRUCTION (STORE DOOR TREAD)

<u>Size</u>	<u>Ply Rating</u>	<u>Replaces</u>	<u>Ass'y</u>	<u>Case</u>	<u>Tube</u>
SD-28	12	(750-20/34x7 10 ply, 750-20 8 ply)	\$67.74	\$63.64	\$4.10
SD-34	12	(825-20 12 ply, 900-20 10 ply)	75.40	70.50	4.90
SD-40	14	(900-20/36x8 12 ply)	87.37	81.87	5.50
SD-42	14	(1000-20/975-20 12 ply)	91.63	85.91	5.72
SD-48	14	(1000-22/975-22 12 ply)	96.94	90.42	6.52
SD-50	14	(1100-20)	103.42	96.45	6.97
		(1100-22)			

PREFERRED:

SD-28	12	(750-20/34x7 10 ply, 750-20 8 ply)	77.90	73.18	4.72
SD-34	12	(825-20 12 ply, 900-20 10 ply)	86.71	81.07	5.64
SD-40	14	(900-20/36x8 12 ply)	100.48	94.15	6.33
		(1000-20/975-20 12 ply)			
SD-42	14	(1000-22/975-22 12 ply)	105.38	98.80	6.58
SD-48	14	(1100-20)	111.48	103.98	7.50
SD-50	14	(1100-22)	118.95	110.93	8.02

Would you kindly let me know at your earliest convenience if these proposed prices meet with your approval."

(Exhibit 2408)

J. I. Simpson, President of Dunlop, asked about an October 1947 original equipment price list, stated:

"Q. Then there is another price list dated October, 1947, Exhibit 2532. This one I would like to ask you whether that is also a Rubber Association price list? You might know better if you looked at the original?

A. I really couldn't tell you. Would you say that that was the same type?

MR. CARTWRIGHT: No, I wouldn't say they were. I would say that was typed and that was mimeographed.

Q. I was just wondering if from your experience in the company you could tell us whether that price list was put out by your company?

A. I really couldn't tell you.

Q. You will note that is the price reduction of 1947, September 1947, and I would gather they were prices that were in effect after the reduction?

A. Yes, apparently. There again, there has been a change in the base and the Pricing Committee had been working it out, and sent it out, I would think by the Rubber Association."

(Evidence p. 7260)

When controls were lifted vehicle manufacturers were freed from restrictions on the use of spare tires. On April 21, 1947 the secretary of the Association wrote to the Tire Companies as follows:

"Attached for your records is a revised schedule of spare tire prices applicable to passenger car tires and tubes.

The only difference between this schedule and the one sent out a few weeks ago is that the prices of safety tubes of the life-guard types have been changed in line with the new replacement prices for safety tubes."

(Exhibit 2639A)

Later in the year a change was apparently made from the old method of pricing spares separately as appears from the following correspondence in September and October. On September 9, 1947 R. I. Raycroft, General Sales Manager of Firestone, wrote General Motors:

". . .

For your information, there is a move on foot in Canada to convert our Manufacturers Base Prices to unit prices which will include the cost of the spare, eliminating the necessity of reporting spare tires. . . ."

(Exhibit 2605)

On September 19, L. E. Levey of Dunlop reported to his London office:

" . . .

Incidentally, we might mention that the basis of selling car manufacturers in Canada appears to be due for alteration as it is intended to sell the car manufacturers on the basis of original equipment price for five (5) tires, forgetting the spare tire price entirely . . . We therefore have also put our prices down (in the letter) in sets of five (5), having this in mind.

. . ."

(Exhibit 2541E)

Later on October 2 he wired to London:

" . . . NOW AGREED. IN CANADA THERE WILL BE NO SPARE TIRE PRICE AND ON PRICES GIVEN YOU NINETEENTH SEPTEMBER PRICE PER ASSEMBLY PROJECTED ON FIVE TIRE BASIS NOW IN EFFECT AS BASE PRICE . . ."

(Exhibit 2541C)

Identical documents entitled "BASE MANUFACTURERS' ORIGINAL EQUIPMENT NET DOMESTIC PRICES", stated to be effective November 1947 covering truck, bus, trailer and special purpose tires and tubes, passenger car tires and tubes and reversible white sidewall passenger car tires and tubes were received from the files of Seiberling and General (Exhibits 2383 and 2636). Another document entitled "PREFERRED MANUFACTURERS' ORIGINAL EQUIPMENT NET DOMESTIC PRICES", stated to be effective November 1947 covering the same tires and tubes was also obtained from the files of Seiberling (Exhibit 2384). H. W. Gregory of Seiberling gave evidence relating to Exhibit 2383 as follows:

"Q. . . . Could you tell the Commissioner whether this is a list prepared by your company or was it a list used by your company? Are those the prices of your product on that date?

A. Of course, to confirm that, I would have to check that with our records. I think I would be safe in saying that we would use that list as a framework of prices upon which we would found our own merchandising program.

Q. Do you know who prepared this list?

A. No I do not know who prepared it, Mr. Beauchemin. I would judge that may be Goodyear's and they sent us a list when they would get it out.

Q. Would they send that list to you direct or would you receive it from the Rubber Association?

A. I cannot be specific. It may be either way or both ways. But, it should be distinctly understood that the Seiberling Rubber Company at no time had any voice in setting that framework,

Q. You did not manufacture all these sizes?

A. No, we just took out of there the ones we need. We set up our own framework and our own program is founded upon this list. In 90 per cent of the cases we deviate away from it.

Q. You deviate in your negotiated price?

A. That is right.

Q. Off of your price list?

A. We make up a price list and then deviate away from our own price list to that special concession, discount or other arrangement.

BY THE DEPUTY COMMISSIONER:

Q. I am sorry, I am not clear on that. Your own special price list would follow?

A. Our own printed price list would be this. We would break away from that for these various special discounts.

Q. The negotiated prices you referred to?

A. That is right.

BY MR. DALEY:

Q. They are the rule rather than the exception?

A. In 90 per cent of the business we get out of this segment of the market, it is at a negotiated price other than these prices."

(Evidence pp. 5262-63)

The base prices of the six companies interested in the original equipment field, which became effective as of November 1947, are substantially identical with each other and with Exhibit 2383. The preferred prices of the same companies, which were effective in late November 1947, are substantially identical with each other. The latter are not the same as the prices shown on Exhibit 2384, but earlier price lists, which became effective at an earlier date in November than those last-mentioned, and were superseded by those last-mentioned, are substantially identical with each other and with those shown on Exhibit 2384. The net result is that the companies' base prices, which became effective as of November 1947, and the companies' latest preferred prices, which were effective at the end of that month, are substantially identical.

As already indicated, only fragmentary documentary evidence is available for the period subsequent to April 1, 1947. No minutes of meetings held after September 30, 1947 are available although the evidence

indicated that such meetings were held. For the reasons indicated in Chapter 4 of Part I under the heading "Expurgation of Minutes", those that were obtained for meetings subsequent to April 1, 1947 or earlier cannot be confidently considered as reliable.

With regard to original equipment prices generally L. E. Levey, General Sales Manager of Dunlop, wrote to his London office at length on September 19, 1947 as to supplying tires at equipment prices for Austin cars exported to Canada. After stating that the request "presents a rather ticklish problem", he said:

" . . .

First of all, in Canada we do not permit original equipment prices to be quoted on vehicles imported into the country. If the vehicle is partially assembled in Canada, the quoting of original equipment prices would be permissible.

" . . ."

(Exhibit 2541E)

After deciding that the Austin business warranted an exception, he said:

" . . .

In the case of Austin Motors, however, they are such a valuable account from Dunlop-England standpoint that we deem it necessary to extend original equipment prices to them on their imported vehicles. We can overcome the objections from the rest of the industry if and when they arise. As a matter of fact, you can quite understand that if Dunlop-Canada did not take some stand of this kind, some of our competitors, particularly No. 5 Co., would undoubtedly enter some arrangement to see that these vehicles are equipped with No. 5 Co's Canadian tires and save Austin some money.

To refresh your memory, in Canada we have three sets of equipment prices - (1) Preferred prices - those extended to very small manufacturers or assemblers of vehicles; (2) Base prices - extended to important manufacturers or part assemblers of vehicles in Canada, and then (3) Confidential prices to Ford, General Motors and Chrysler, and probably Studebaker and Nash, who will soon be manufacturing or assembling in Canada. . . .

" . . ."

(Exhibit 2541F)

D. Arrangements Respecting Terms of Sale of Original Equipment Tires and Tubes

At a meeting of representatives of the Tire Companies on October 27, 1937 the ancillary terms and conditions of sale to the various classes of original equipment accounts were revised and appended to the minutes in the following form:

"TERMS

Net 10th Proximo - F.O.B. Tire Plant -
Freight allowed to car company plant.

Orders must show sales tax license number and certification, otherwise billing is subject to sales tax of 8%.

All prices are subject to excise (poundage) tax unless on the order the car manufacturer certifies that the tires ordered are for year models that have been qualified by Empire content for exemption from such excise tax.

ORIGINAL EQUIPMENT TIRES: All Equipment Tires sold to manufacturers are for use as Original Equipment on new vehicles and are not to be used as Spares, for Resale, or for use as equipment on reconditioned or repossessed vehicles.

EQUIPMENT for an ordinary vehicle consists of 4 casings and 4 tubes;
" for a vehicle equipped with dual rear wheels, consists of 6 casings and 6 tubes.

DISTRIBUTION OF PRICES

- (a) Equipment prices set for car manufacturers on the Base List shall in no case be communicated to accounts on the Preferred List, the prices to which are 15% over Base List prices;
- (b) Where a vehicle manufacturer requires only one or a limited number of tire and tube sizes to equip his production he shall be quoted prices for only those sizes that are suitable as original equipment for the vehicles he produces;
- (c) Base List equipment prices shall be quoted only to accounts on the Base List and Preferred List prices are to be quoted only to accounts on the Preferred List;
- (d) Accounts not listed will not be quoted or sold at manufacturers' original equipment prices.

PROTECTIVE PROVISION: On quotations of prices and order forms the following protective clause shall appear:

'The prices in this order are subject to increase by reason of any new legislation and/or regulations or an order of any government, strikes, lock-outs, extreme exchange fluctuation, civil commotion or any act of war affecting or increasing, beyond the control of the Company, the delivery cost of the goods herein specified, becoming effective before delivery thereof. Any such increase shall be added to the price herein provided and shall be paid for by the Customer and the Customer so agrees.'

SPARES: All tires used as Spares for driveaways or Spare Tire Equipment mounted on vehicles will be reported monthly and billed on the basis of the Manufacturers' Spare Tire Prices.

BRANCH SERVICE CHARGE: On tires ordered for delivery to Fort William and West and Quebec City and East a branch service charge of \$5.00 per set of four casings and tubes has to be added to manufacturers' prices, except sizes 600-16, 625-16, 650-16, 700-15, 700-16 and 750-16 for which the service charge is \$3.00 per set. Freight allowed to points where delivery is required.

EXCHANGING ORIGINAL EQUIPMENT TIRES: Where Truck Tires are exchanged for Truck Companies, such exchanges shall be made only at Branches of Truck Manufacturing Companies and not at the premises of Agents of such Companies, and tires taken in credited through Truck Companies Head Offices at the Current Equipment Prices and tires sent out in exchange charged at Current Equipment Prices Plus 10%. In the case of any exchange of tires made for truck or automobile dealers, such exchanges shall be on the basis of Dealers' Prices. This same arrangement would apply to Passenger Automobile Manufacturers' Retail Branches."

(Exhibit 2180)

When price lists and terms were issued on July 16, 1940 (which, as already noted, continued in effect until March 1947) these terms continued unchanged, except to provide for the increase to 25 per cent in the differential on passenger tires between base and preferred prices (Exhibit 2013E).

When price lists were reviewed and distributed in October 1945 the Association secretary in his covering letter dated October 22 to all Companies stated:

". . .

You will note that the sheet on Terms of Sale is not attached to these price lists as terms are to be discussed at the next meeting of Tire Sales Managers and there may be some change. As soon as the terms have been reviewed and agreed upon, however, I shall send them to you."

(Exhibit 2035)

The question as to whether the branch service charge applied to shipments to Fort William itself was apparently raised at a meeting prior to October 29, 1945 because the following item appears in the minutes of a sales managers' meeting on that date:

"MANUFACTURERS' PRICES AND TERMS:

The meeting discussed the recommendation made by Firestone at the last meeting that the 'Branch Service Charge' be applicable for deliveries 'West of Fort William' instead of 'Fort William and West' as at present.

Firestone advised that they were already shipping into Fort William free of branch service charge, pointing out that if they attempted to collect the charge, the purchaser could demand shipment

free of the charge to Port Arthur and then truck the tires from Port Arthur to Fort William which is only two miles. This statement revealed that there was some confusion regarding the exact significance of 'Fort William and West' as several companies had apparently interpreted 'Fort William' to mean broadly the head of the Lakes area. It was agreed that the Secretary should write to all companies asking for an opinion on these matters."

(Exhibit 2237)

The minutes of a sales managers' meeting on December 3, 1945 record:

" . . .

TERMS TO CAR MANUFACTURERS: This subject was discussed with particular reference to branch service charge on shipments to the head of the Lakes and West. The meeting was unable to arrive at any definite agreement and it was decided that a committee consisting of representatives from Goodyear, Firestone, Dominion, Dunlop and Goodrich be appointed to consider the problem. The Secretary was instructed to get in touch with Mr. Raycroft of Firestone on December 10th to arrange a suitable date for a meeting of this committee.

. . . "

(Exhibit 2235)

The minutes of a sales managers' meeting on January 14, 1946 record:

"TERMS TO CAR MANUFACTURERS: This matter was discussed with particular reference to the question of the application of 'branch service charge' or 'freight equalization' charges on shipments to the Canadian Car & Foundry Company at Fort William in view of the fact that Firestone has been selling this account without making either charge.

It evolved that both Goodrich and Goodyear have been quoting and selling to this account on the basis of freight equalization on Windsor with the balance of freight for the buyer's account, while Dominion has been quoting prices plus 'branch service charge'.

In the circumstances, Firestone agreed to take the matter up with Canadian Car & Foundry with a view to revising their quotations to the basis of freight equalization on Windsor, with the balance for buyer's account. They will report further at the next meeting.

. . . "

(Exhibit 2234)

The minutes of a sales managers' meeting on February 25, 1946 record:

"TERMS TO CAR MANUFACTURERS: Mr. Nelson reported that Firestone had written to the Canadian Car & Foundry at Fort William changing their terms of sale to the basis of freight equalization on Windsor (30 cts. per 100 lbs. on carload lots) with balance of freight to buyers account.

. . . "

(Exhibit 2233)

Finally, the following item appears in the minutes of a sales managers' meeting held on April 29, 1946:

"TERMS TO CAR MANUFACTURERS: It was indicated that reports have been received of sales to an original equipment account at Fort William on the basis of shipment f.o.b. Fort William.

All companies represented confirmed that they are adhering to the agreed terms, i.e., freight equalization on Windsor, balance of shipping charges for the buyer's account."

(Exhibit 2228)

E. Arrangements Respecting Classified Lists of Vehicle Manufacturers

It was understood in the tire industry that "Base" and "Preferred" prices would be granted only to those original equipment manufacturers whose names appeared on the corresponding "Base" and "Preferred" lists. This understanding was reaffirmed from time to time at tire meetings and in correspondence between officials of the Tire Companies and these lists were revised on many occasions by additions and deletions, or by names being transferred from one list to the other. The procedure usually followed when a company wanted the inclusion of an account in a particular list was for that company to make the proposal in a letter to the secretary of the Association. The latter then relayed the request to the other companies who could make whatever investigation of the proposed account they deemed necessary. The matter would subsequently be decided at a tire meeting. For example, on February 22, 1937 the secretary of the Association sent the following circular letter to the member companies:

"Dear Sir:-

I have the following from one of the companies:

'The Robert Bell Engine & Tresher Company, Seaforth, Ontario, have made application to us to be listed as Thresher Equipment Manufacturers entitled to Preferred prices on tires for original equipment. Will you please write all the other Companies with a view to having this name appear on this list.'

Would you please let me hear from you in regard to the above."

(Exhibit 2570D)

On February 24 Dunlop wrote to their London Branch manager:

"Robert Bell Engine & Thresher Co.,
Seaforth, Ont."

What information can you give us regarding the subject concern, who have been recommended for addition to the Preferred Manufacturers' List entitling them to preferred prices on tires for original equipment.

One of the Rubber Companies have recommended them, and we would like to have whatever information you can give us regarding the activities of the Bell Concern. Please let us have this information as quickly as possible.

TMP:M"

(Exhibit 2570C)

Dunlop received an answer dated February 25 from their branch manager (Exhibit 2570B) and on February 26 Dunlop wrote to the secretary:

"Dear Mr. Hannay:

In response to yours of the 22nd instant, we are agreeable to having the name of Messrs. Robert Bell Engine & Thresher Company, Seaforth, Ontario, added to the list entitling them to preferred prices on tires for Original Equipment.

Yours very truly,

TMP:M"

(Exhibit 2570A)

A few days later, on March 10, 1937, the account was approved for listing together with another one, by a meeting of general sales managers:

". . .

Account Lists: The Robert Bell Engine and Thresher Company, Seaforth, Ontario, was added to the list of tractor and implement firms entitled to 'Preferred' original equipment prices for the products it manufactures.

The Hom-O-Long Trailer Company, Dufferin Street, Toronto, was added to the 'Preferred' list of manufacturing accounts entitled to buy equipment tires at 10% above base list prices.

". . ."

(Exhibit 2189)

Additions of accounts to the lists were not always made at meetings. On occasion this was done simply through an exchange of letters, the secretary of the Association acting as go-between for the Companies. Thus, on November 2, 1940 the secretary wrote to the sales managers of the various Companies: -

"Dear Sir:-

I have the following from one of the companies:

'Willys of Canada, Limited, Windsor, Ontario, are not on the Car Manufacturers List. We believe they should be on the Base List, and would be glad if you will poll the other companies to see if this name can be added.'

Would you please let me hear from you on the above subject."

(Exhibit 2556)

This letter was followed by another one on November 20, 1940 in which the secretary said:

"Dear Sir:-

I have now had replies from all companies to my letter of November 2nd, asking that Willys of Canada, Limited, Windsor, Ontario, be placed on the Car Manufacturers' Base List. All companies are agreeable to have this name placed on the Car Manufacturers' Base List. Will you, therefore, please add Willys of Canada, Limited, Windsor, Ont. to the list."

(Exhibit 2555A)

On November 21, 1940 a memorandum was directed by T. M. Ponton, of Dunlop, to other employees of the company as follows:

"CAR MANUFACTURERS' ORIGINAL EQUIPMENT LIST

The name of Messrs. Willys of Canada, Limited, Windsor, Ontario, has been added to the Base List of the Car Manufacturers' entitling them to purchase tires at original equipment prices.

Will you please make this addition to your List on page 9, Section F of your Price Book."

(Exhibit 2555B)

Beyond the broad general principle that only bona fide manufacturers would be quoted original equipment prices, there was no well defined standard which a manufacturer had to attain before qualifying for either the "Base" or the "Preferred" list on passenger, bus and truck tires and tubes, although the size of the equipment manufacturer was the main consideration when placing an account on one or the other list. In his evidence C. N. Larsen, General Sales Manager of Gutta Percha, said:

"Q. Well, is there any rule of thumb recognized in the industry distinguishing whether a name would go on one rather than on the other?

A. No, there was no rule. It was based on the size of the manufacturer. With respect to some, of course, there was no question about it, they were entitled to the extreme price."

(Evidence p. 6599)

On the same subject A. E. Grainger, the official in charge of manufacturers' sales at Goodyear, was asked:

"Q. I gather from what you say that there is no standard rule or standard or particular quantity or volume basis for distinguishing between the preferred or base account, although generally the

base accounts are the larger ones and the preferred ones are the smaller fry: is that a fair statement?

A. That is a fair statement."

(Evidence p. 7124)

An exception to the question of size or actual purchases as the determining factor in listing an account on the "Base" rather than on the "Preferred" list was the case of certain Canadian subsidiaries of American companies which were included in the "Base" list though their actual purchases of tires and tubes for original equipment purposes in Canada might be below those of certain accounts on the "Preferred" list. Mr. Grainger in his evidence gave the reason for this preferred treatment:

"Q. Would it be possible that some accounts on the base, on Goodyear's base list, would be buying ordinarily less tires than some accounts on the preferred list?

A. I think you are quite right, sir. There would be in this way, for instance, let us take White at Montreal: before they expanded and built that plant at Montreal White just automatically goes on our list for base, because they are in the States and we are a supplier to White in Cleveland, just automatically. Now for a time they might buy less. We couldn't operate any other way with White. And I dare say there are other accounts, such as Twin Coach at Fort Erie.

Q. Who are on the base list?

A. The base list.

. . .

Q. And I suppose the reason why some of the accounts you mentioned, the White truck for one, have to be put on the base list . . .

A. It is due to our connection at White in Cleveland in the States.

Q. And if you didn't, they would be able to get their tires on the same basis from their American parent company?

A. No company would hesitate to sell them, we didn't, at that base price.

Q. Well, put it this way: if no Canadian company would sell them on that basis, because of their small volume, they could still get their tires from their American company?

A. Yes, they could, because the protection on rubber itself as an individual item carries one duty whereas a complete truck with rubber takes much less duty."

(Evidence pp. 7123, 7125)

Although the listing of accounts on the "Base" list has been dealt with from time to time at tire meetings, this is not a matter that has taken up a great deal of time because the number of large and well-established vehicle manufacturers who made up the list has not varied much over the last ten years. In 1937 the industry's "Base" list was made up of 29 accounts (Exhibit 2180): eight years later in 1945, after some revisions and additions, the list had grown to 31 names (Exhibit 2239) and at the beginning of 1948 approximately 36 names constituted the original equipment manufacturers' "Base" list (Exhibit 2360). The evidence indicates that in the case of the largest automobile manufacturers whose names appear upon the "Base" list, the corresponding "Base" prices served only as a bargaining basis or for invoicing purposes, the net prices to such manufacturers being determined by the application to such base prices of confidential discounts or rebates which generally were within the knowledge of only certain senior officers of each company. The prices to these larger manufacturers were therefore determined competitively. The foregoing describes the position of the large automobile manufacturers like General Motors, Ford and Chrysler. The evidence indicates that certain other manufacturers on the "Base" list were in a somewhat similar position but suggests that "Base" prices were expected to be adhered to in respect of at least some on the "Base" list. The evidence on the latter two points however, is far from clear or conclusive and leaves the effect of the establishment of "Base" prices and "Base" accounts in considerable doubt although it would appear that the Companies must have considered that they established some artificial stabilization of prices and restraint upon the competition that would otherwise have existed.

Most of the discussion at the meetings centred on the "Preferred" list and in respect of this list the evidence leaves no doubt that the Companies intended it to be adhered to for the purpose of limiting the persons to whom "Preferred" prices would be given. At one point in his evidence Mr. Larsen of Gutta Percha said:

"A. Well, there are two types of manufacturers, there is the large manufacturer, like the big companies, General Motors, Ford and International and they get the extreme prices; then there are a lot of smaller people who don't make cars but they make, as I mentioned, a trailer or some big equipment that requires a couple of wheels and a couple of tires, and they were on the secondary list. That was the list that we generally had all the discussion about . . ."

(Evidence p. 6599)

Sales to firms on this list accounted for a very small proportion of original equipment sales as a whole, but joint action relating to this list did nevertheless affect a definite, if small, field - that of the small or miscellaneous vehicle manufacturers.

One reason for the industry's cautiousness in adding an account to this list was the lower return on original equipment business; and there also was some apprehension on the part of the Tire Companies that tires and tubes sold liberally on an original equipment basis might ultimately disturb the replacement market. This was expressed by Mr. Needles of Goodrich in his evidence:

"Q. Would the qualifications of the applicant for listing be discussed at a meeting?

A. We would want to know whether the man was making equipment for sale, and we might have an application from him for a pricing structure. If a man is really making equipment for sale, as equipment, we would feel obligated to supply him with tires at the equipment level and price, rather than at the dealer level and price. And if we did not feel he was entitled to it, we were not concerned about it.

. . .

Q. Would a person have to be a manufacturer, really -- assembling the chassis?

A. If he is not, the assumption is that he bootlegs tires out, and disturbs our pricing set-up with our dealers. We give him tires to put on equipment to be sold as a complete unit, and not have the tires sold fictitiously, or fictitiously bought to be placed on alleged vehicles, and then sold at a reduced price, to disturb our dealers."

(Evidence pp. 5576,7)

Mr. Larsen of Gutta Percha was asked about the same matter:

"Q. I gather that one of the main concerns about these smaller original equipment concerns is that they might be black marketing or bootlegging tires? That is to say, tires sold for original equipment would get out into the dealer trade.

A. That could happen, but I don't think it has happened.

Q. Why?

A. Because the lists are pretty closely watched."

(Evidence p. 6600)

The accounts on the "Preferred" list were for the most part small manufacturers of miscellaneous vehicles and machines requiring tires and tubes, such as wagons and trailers of various types and road machinery. Close supervision over the list was maintained by the industry, not only by checking an account before it was put on the list, but also by periodic revision of the list itself. Upon occasion, for this purpose, each tire company reported to the Association the number and value of tires and tubes sold to each account on the preferred list. In June 1937 the sales managers recommended nineteen accounts to constitute the Preferred List (Exhibit 2186). In April 1938 the list appears to have stood at at least eleven (Exhibit 2174). In May 1938 it stood at five accounts (Exhibit 2172) and in June 1938 it stood at eleven (Exhibit 2168). In August 1938 it stood at five (Exhibit 2165). In August 1945 it stood at seven (Exhibit 2240).

The case of the Willock Truck Equipment Company of Vancouver, B.C. shows that getting recognition on the "Preferred" list was not a routine procedure. The Willock company was originally placed on the "Preferred" list at a general managers' tire meeting of December 10, 1936 (Exhibit 2193). It was subsequently dropped from the list by the industry and on April 19, 1939 it made a strong plea for reinstatement in a letter to Gutta Percha:

"Gutta Percha & Rubber, Limited,
Toronto, Ontario.

Gentlemen:

For the past 2-1/2 years we have been actively engaged in the manufacture of trailers. Our product in this respect consists of 4 wheel trailers, Semi-trailers and logging trailers.

. . .

We are informed that, at the present time, the one firm in B. C., who is on the preferred manufacturers list is Hayes Manufacturing Co. Ltd., our competitor. We can say without fear of successful contradiction that, in the past several months, we have produced more trailers than they have. . . .

Our trailers are highly regarded by logging operators and fleet owners. However, our price set-up must be competitive which it cannot be unless we are enabled to purchase tires, for original equipment purposes, on the proper basis.

Frankly, we feel that we are being discriminated against. We do not believe that one firm should have a virtual monopoly in respect to purchasing tires for original equipment purposes, which, naturally, places them in a very advantageous position, practically eliminating competition.

We know that we can purchase tires in the United States at equipment prices. Why not in Canada?

. . .

It would not make a very nice picture to have to equip the Dominion Government's vehicles with foreign-made tires because Canadian Tire Manufacturers refuse to supply us on a proper basis.

We are fully prepared to prove that every tire which we have purchased, for original equipment, has been used for that purpose. Our records are open for your inspection should you so desire.

After reviewing the foregoing, we ask that you give our request, to be re-instated on the preferred manufacturers list, your serious consideration. Investigate our activities and prove to yourselves that we are really entitled to be on the list or advise us just what

other qualification we must have in order that we may do business on an equal basis with our competitor.

Awaiting your reply, with interest, we are

Yours very truly,

WILLOCK TRUCK EQUIPMENT COMPANY,
Per (Signed) H. McGregor
ASS'T MANAGER"

H. McGregor/RM

(Exhibit 2703B)

The application was transmitted by Gutta Percha to the secretary of the Association on April 25, 1939:

"Mr. A. B. Hannay, Manager & Secretary,
The Rubber Association of Canada,
Harbour Administration Bldg.,
Toronto, Ontario

Dear Sir:

The attached letter from Willock Truck Equipment Company, 1378 West Broadway, Vancouver, B.C. applying for re-instatement on the 'Preferred' Manufacturers' List is self explanatory.

In view of the fact that they have orders on hand for some trailers, including six for the Dominion Government, Department of National Defence, we believe this application should be given careful consideration at once. Probably this could be handled by correspondence."

(Exhibit 2703A)

The application was in effect turned down on May 8, 1939 (Exhibit 2155) and on the following day Mr. Larsen of Gutta Percha wrote to all the sales managers:

"Dear Sirs:

In the minutes of the original equipment tire pricing committee meeting of yesterday afternoon, I note that the Willock Truck Equipment Company, Vancouver, was turned down in their application for reinstatement on the Preferred Manufacturers' List for tires. I doubt the wisdom of doing this in view of the information contained in their recent letter, which doubtless Mr. Hannay presented to the meeting.

There are several reasons why I consider this account is entitled to be placed in a competitive position with others in the same class of business, but the two principal ones are - first, they can purchase tires in the United States at equipment prices and import them at a

very much lower price than our dealer net billing. In the second place, they are at present working on six trailers for the Department of National Defence and, naturally, if they cannot get equipment prices on Canadian tires, they will equip these with foreign tires. They might even convey to the Dominion Government their reason for so doing, and I don't think that fact would do the industry any good.

Feeling that the question is one that should be settled by the Sales Managers rather than by a Pricing Committee, I am writing this letter to all the companies with a request that they report their decision promptly either to me or to Mr. Hannay. I may say that I have already spoken to Mr. Richards of Goodyear, and he quite agrees that it is a matter for the Sales Managers to handle, and so far as he is concerned, he is favourable to reinstating the Willock Truck Equipment Company on the Preferred Manufacturers' List."

(Exhibit 2703C)

On June 1, 1939 the sales managers at a meeting confirmed that the Willock company would not be placed on the "Preferred" list but would be entitled to the less favourable terms of purchasing tires and tubes at dealer billing prices with volume bonus (Exhibit 2153).

As a result apparently of further representation, Mr. Grainger of Goodyear wrote to the secretary of the Association on July 28, 1939 with copies to the other sales managers:

"We have copy of your letter of July 22nd, giving an excerpt from Mr. Larsen's letter, dealing with Willock Truck Equipment Co. Ltd. Vancouver.

For some reason, Mr. C.B. Larsen, Gutta-Percha & Rubber Company seems unfriendly to the Pricing Committee. The writer does not know why, but we would like to take this opportunity of saying, that the Pricing Committee consists of members of considerable experience and sound judgment in handling Manufacturers' sales problems, and at all times have tried to co-operate with the Gutta-Percha Company.

If Seiberling have supplied tires through their Distributors to Willock at Manufacturers' Prices, it seems to us Seiberling is the problem to handle, rather than an individual Company arbitrarily placing a name on the Manufacturers' List, without other Companies having an opportunity of passing an opinion on the best way to handle the situation.

Mr. Larsen's decision to automatically quote Willock Truck Company Manufacturers' prices, irrespective of the policy laid down seems to be wrong, and it does not correct a wrong.

It is our suggestion this be brought up at the next Sales Managers or General Managers meeting."

(Exhibit 2690)

A subsequent general managers' tire meeting held on January 3, 1940 whilst adding another account to the "Preferred" list, failed to include the Willock company. The following is an excerpt from that meeting dealing with original equipment accounts:

"Preferred Equipment List: The name of Sicard Ltee., Montreal, was added to this list, which now consists of the following:

Beach Motors, Limited,	Ottawa
Canadian Top & Body Corporation,	Tilbury
Home-A-Long Company,	Toronto
Welles, H.V. Company,	Windsor
London Concrete Machinery Co.,	London
Richardson Road Machinery	Saskatoon
Sicard Ltee,	Montreal

The sales managers were instructed to review the above at their next meeting.

Further, it was agreed that companies will instruct their organizations that sales at preferred equipment prices may be made only to firms on the named preferred equipment list and to these only at preferred equipment prices and terms."

(Exhibit 2144)

Finally, on August 12, 1940 the sales managers agreed at a meeting to add the Willock company to the list of accounts entitled to "Preferred" prices (Exhibit 2136).

In August 1945 the number of accounts on the "Preferred" list stood, as has been seen, at seven names but with the end of hostilities in 1945 it was anticipated that applications for "Preferred" prices would be received by the Tire Companies in increasing numbers. The matter was discussed at a sales managers' meeting on October 29, 1945:

"CAR MANUFACTURERS AUTHORIZED ACCOUNTS:

The consideration of a number of accounts recommended for the preferred list led to a general discussion of policy on sales to accounts whose volume of purchases is very limited or whose status as genuine manufacturers, as distinct from assemblers or importers, is open to some doubt. It was agreed that in the coming year or two there would be many applications to purchase tires at original equipment prices from such firms and the question arose whether the Preferred List was intended to cover such cases, or whether an additional category of original equipment accounts should be started.

It was agreed that the Secretary should write direct to the original equipment sales managers of all tire companies requesting them to go into this question of policy immediately and to submit

their views to the Secretary promptly. At the same time they are to be asked to review the names currently on the Preferred List and the names listed below which have been recommended for inclusion in the Preferred List and to state their opinion as to how they should be listed, if at all.

Canadian Ingersoll Rand Co. Ltd.
Hamant Steel Car & Engineering Works
Misson's Canada Limited
Pierre Thibault
Wettlauffer Welker Industries Ltd.

Sherbrooke, Quebec
Hamilton, Ontario
Montreal, Quebec
Pierreville, Quebec
Toronto, Ontario.

..."

(Exhibit 2237)

At a subsequent meeting held on December 3, 1945 the sales managers decided that there was no need for an additional classification of original equipment accounts, but agreed on a new uniform procedure concerning future applications:

" . . .

It was agreed that in future companies wishing to recommend accounts for inclusion in any of the lists of authorized accounts shall write to the Secretary giving information regarding the account's operations, and naming specifically the list for which it is recommended and send copies to the other companies so that they may proceed to make investigations without delay.

..."

(Exhibit 2235)

The sales managers, feeling that too much time was spent at meetings in discussing proposed original equipment accounts agreed that a committee should be appointed composed of representatives from Dominion, Firestone and Goodyear "to draft a formula by which accounts suggested for inclusion in the lists may be dealt with expeditiously and efficiently" (Exhibit 2222).

That a committee was in fact appointed is indicated by the minutes of a sales managers' meeting of July 8, 1947:

"ORIGINAL EQUIPMENT LISTS: Recommendations of the sub-committee on original equipment lists regarding a number of accounts were reviewed and approved as follows:-

Machineries Pont-Rouge Ltee., Pont-Rouge, Portneuf Co., Que. -
Deferred indefinitely.
Aetna Distributors Ltd., Winnipeg, Man. - Vetoed.
A. S. Horwitz & Son (Calgary Farm Machinery & Supply Co.),
Calgary, Alta. - Added to Preferred List and Preferred
Implement List.

Eugene Prevost Autobus, Ste. Claire, Dorchester Co., Que. -

Deferred indefinitely.

Rae's Wagon & Body Works, Guelph, Ont. - Vetoed.

Industrial Trailer Mfg. Co., Vancouver, B. C. - Deferred indefinitely.

Canadian Traction Ltd., Windsor, Ont. - Vetoed.

The Secretary then reviewed briefly the up-to-date Master Lists which he had compiled, and which had been examined and revised somewhat by the sub-committee on original equipment lists at a recent meeting. The Sales Managers approved the Master Lists as revised for distribution and use by all companies.

..."

(Exhibit 2206)

On July 11, 1947 the Association office sent the revised "Master Lists" to all Companies:

"We are attaching herewith two copies of the revised up-to-date Master List of Original Equipment Accounts which Mr. Smith tabled at the Sales Managers' meeting of July 8th, and was approved by all companies.

Hoping this list will be of guidance to you, we remain,"

(Exhibit 2601a)

The Base List accounts stood at thirty-six, the Preferred at thirty-seven, the Base Implement List accounts at twenty-six and the Preferred Implement at twenty-four. The two latter lists will be mentioned in the following section.

At reported meetings between the summer of 1945 and the summer of 1947 over sixty-five applications for "Preferred" listing were considered by sales managers. Of these, thirty were approved. For example, at a meeting on May 13, 1947 eight names were added, four were reserved and one rejected (Exhibit 2208). The Commission obtained no minutes of tire meetings held after September 30, 1947. Correspondence shows however, that the same procedure as theretofore was continued at least well into 1948. This correspondence may be summarized as follows:

October 29, 1947 - T. M. Ponton of Dunlop wrote the Association recommending the "preferred" listing of a company at Saint Pascal, P. Q. (Exhibit 2579).

January 30, 1948 - T. M. Ponton wrote officials of his company that "To the list of preferred Car and Truck Manufacturers it is permissible to add" two names, including the one he had recommended on October 29, 1947 (Exhibit 2552).

February 18, 1948 - W. J. Cameron of Gutta Percha wrote to other Companies recommending the addition of a company at Gananoque. His copy contains a longhand note "added to Preferred List, 23/3/48" (Exhibit 2491).

March 12, 1948 - W. J. Cameron wrote to M. C. Moyer, Manager of Gutta Percha's Tire Division:

"Hall's Machine Shop, Shaunavon, Saskatchewan, were proposed for the Preferred Manufacturers' Equipment List. As far as we know, this name has not been officially approved, yet it is reported that Firestone have been selling tires to this account at the Preferred Equipment prices.

The Prescott Machine Company, Prescott, Ontario, have not been proposed for addition to the Preferred Manufacturers' Equipment List, yet Dunlop report that Firestone are selling this account at Preferred Equipment prices."

(Exhibit 2489)

March 22, 1948 - T. M. Ponton of Dunlop complained to Firestone about the above instances and adds:

" . . .

Apparently the method of investigating and approving any recommendations before supplying tires is questionable and evidently some other method should be adopted in the handling of such applications for Original Equipment listing."

(Exhibit 2572)

March 25, 1948 - In a letter from Dominion to Gutta Percha A. Walker inquired about the Gananoque firm referred to above, giving approval and asking: "Would you please be good enough to advise us if this concern is finally approved for addition" (Exhibit 2492).

F. Implement List

During the war there was only one "Implement" list used by the industry, there being no secondary one corresponding to the passenger, bus-truck tires "Preferred" list. In 1937 the "Implement" list contained the names of twelve accounts which were either manufacturers or large distributors of agricultural implements (Exhibit 2180). In 1945 the list stood at five names (Exhibit 2240).

The ruling concerning the granting of "Implement" prices was set out at the top of the list:

" . . .

TRACTOR COMPANIES OR DISTRIBUTORS on the following list are entitled to manufacturers' Base equipment prices for tractor tires and tires for farm implements only:

. . ."

(Exhibit 2180)

The ruling, having been found the object of possible misinterpretation, was clarified further at a meeting of sales managers on July 21, 1939:

" . . .

Tractor and Implement Tires: There was discussion of the present rule which is -- 'Tractor Companies or Distributors on the following list are entitled to Manufacturers' Base Equipment Prices for tractor tires and tires for farm implements only'.

By some this is held to mean that listed tractor and implement companies are entitled to 'Base' prices only on tractor or implement types of tires; by others that such accounts are entitled to 'Base' equipment prices for truck or passenger types of tires if such are bought for use as original equipment for tractors or implements.

It was agreed to recommend to General Managers that listed tractor or implement companies or distributors shall be given 'Base' equipment prices only on tractor and implement types of tires and that preferred equipment prices shall apply on all other types of tires bought for original equipment of tractors and implements.

. . ."

(Exhibit 2149)

The ruling was subsequently changed to the following:

" . . .

(Companies on the following list are entitled to manufacturers base equipment prices for Tractor & Farm Implement tires only)

. . ."

(Exhibit 2240)

The summer of 1945 saw an upsurge in the number of requests to be recognized as manufacturers and given original equipment prices in respect of tractor and farm implement tires. This was due in part to the fact that such tires had become in somewhat freer supply, and in part to the number of persons who were being released from the services and were seeking to establish themselves in this line of business. This situation

led the Tire Companies to take action toward the development of a "Preferred Farm Implement List", which would involve for the parties contained thereon prices more advantageous than dealer prices but not so advantageous as those offered to persons on the regular "Implement List". Thus, recognition as manufacturers could be given to those new applicants who appeared to warrant it and, at the same time, the regular "Implement List" would not be unduly expanded. The matter was discussed at a sales managers' meeting held on May 27, 1946:

" . . .

In connection with several other accounts requesting original equipment prices on wheelbarrow tires, etc., it was suggested that there should be a Preferred Farm Implement List covering tractor, implement, wheelbarrow and pneumatic industrial tires and tubes. The meeting approved this idea and Mr. Grainger undertook to make a survey and recommend a formula for arriving at preferred equipment prices on these tires. His recommendation will be sent to the Secretary for distribution to all companies.

The following accounts will be given dealer prices on their tire requirements until the proposed Preferred Farm Implement List is set-up at which time they will be subject to re-consideration with a view to inclusion in this list:

Rhodt Metal Works, Montreal, Que.
Listowel Machine Shop, Listowel, Ontario.

. . ."

(Exhibit 2226)

Reporting in a memorandum on the meeting of May 27 which he attended, Mr. Larsen of Gutta Percha wrote to the general manager of his company:

"Toronto, Ontario.
June 8th, 1946.

MEMO TO: Mr. J. R. Belton,
General Manager.

SUBJECT: Tire Sales Managers' Meeting, May 27th, 1946

In response to your request for comments on the Minutes of this meeting, please find same herewith.

. . .

Original Equipment. At present there are two original equipment lists for passenger and truck manufacturers. There is the base list which is the lower of the two and then the preferred list which is something like 10% or 15% higher than

the base. The suggestion was made that there might well be two lists for farm implement equipment. At present there is only one. The Goodyear representative undertook to recommend a formula for arriving at a preferred equipment price list and his recommendation will be sent to the other companies via the Secretary.

Certain names were proposed for original equipment prices and the action taken in each case was the result of investigation and represented the approval of the majority of companies present.

. . ."

(Exhibit 2483)

On June 19, 1946 J. A. Lucas, General Sales Manager of Dominion, wrote to the Listowel Machine Co. of Listowel, Ontario:

"Unfortunately your Company has not as yet been officially added to the Original Equipment List.

However, I am hopeful that final approval will be obtained in the near future, and in the meantime you may be rest assured (sic) that the Original Equipment price, when authorized, will be retroactive to the date upon which we first presented your name to the Rubber Association."

(Exhibit 2423B)

This letter later came to the attention of A. E. Grainger, Manager of the Manufacturers Sales Department of Goodyear, who then wrote R. C. Berkinshaw, his General Manager, on November 20, 1946 protesting about this and stating:

"We have, on several occasions, brought up the question of salesmen of competitive Rubber Companies freely talking about the operations of the Rubber Association, or mentioning that they approve or disapprove of certain things.

On several occasions when this item was brought up for discussion in the regular meetings, the Industry members denied all knowledge of discussions of this kind.

We now have a very good example of this very thing, as per attached copy of letter written by Mr. J. A. Lucas, Dominion to Listowel Machine Company, Listowel, Ont. It calls attention to two items:

1. Promise to have the company officially added to the Original Equipment list, with the understanding Dominion will ship and bill Listowel Machine's requirements at Dealer Prices and issue credit note when they are added to the official list.

2. The letter specifically mentions and tells Listowel Machine Company, that their name is being presented to the Rubber Association.

We are not worried much about the first item, but we find there is far too much discussion in the field by Rubber Companies' salesmen talking about this or that being handled by the Rubber Association, and we feel it is well worth while calling your attention to this item and attaching some evidence where it is carried on in communications.

. . ."

(Exhibit 2423A)

The Listowel company was in fact added to the Preferred Farm Implement List at a meeting held on October 1, 1946 (Exhibit 2223).

As of July 11, 1947 there were twenty-four names on this newly created list (Exhibit 2601). A number of these accounts were placed on the list with the stipulation that "Preferred Implement" prices applied in their case only to certain specific sizes of tires and tubes. As of July 11, 1947 the "Base" Implement list stood at twenty-six names.

Chapter 6 - Oral Evidence and General Comments

Reference has been made throughout the previous Chapters to documents in the form of minutes of meetings, price lists and correspondence obtained from the Tire Companies and the Association during the course of the investigation. In order to obtain further information about the matters covered by the investigation various representatives from the Tire Companies and the Association were called to give oral evidence at hearings held during 1949. These hearings were of great assistance in explaining technical matters and resolving uncertainties in some of the documents and in obtaining additional information relating to the industry. They were of particular assistance in ascertaining the effect of the various wartime control measures upon the industry.

A considerable part of the witnesses' evidence at the hearings concerned matters contained in the large number of minutes of tire meetings held during the relevant period. Whilst it was generally admitted that the minutes indicated correctly the various items that had been discussed at the meetings, it was also generally stated that the minutes were inaccurate in reporting or implying that agreements had been entered into among the various Tire Companies.

Dealing with his own minutes, G. B. Smith said that he thought they were reasonably accurate. Further on Mr. Smith qualified this statement by saying:

"A. I question, in my own mind, very much, whether any of them -- those present -- regarded them as genuine agreements, which they had any serious intention of following up themselves, or which they believed that their competitors had any serious intention of observing. Then, as to enforcement, there were no regular methods followed. A company might complain that somebody was not doing something which was supposed to have been agreed upon. The retort of the company alleged to have departed from the agreement was always, 'Well, everybody is doing the same thing' -- or that somebody else was doing something else, and -- 'I am just meeting competition'-- combatting action taken by somebody else. There was no regular enforcement system of any kind."

(Evidence p. 5093)

Various explanations were given by the representatives of the Tire Companies concerning their attendance at tire meetings. It was said that the meetings were simply gatherings of people interested in the tire business at which mutual problems and points of view were discussed without any agreement being made. Many witnesses said that they had no authority to agree to anything on behalf of their companies at these meetings, that they were present simply as observers to learn what was going on in the industry; that whilst they could always find out about

the opposition's prices and sales programs through their companies' field organizations, the meetings gave them direct access to exact information on these matters.

Various interpretations of the word "agree" and its equivalents, and of statements implying agreement, which appear in the minutes and correspondence, were given by the various witnesses at the hearings. It was stated that the word as it appeared in the minutes or correspondence was a misnomer; that the word had been loosely used to record what had merely been discussions at meetings and statements on the part of various persons as to what their respective Tire Companies were proposing to do; and, again, that mental reservations had been made as to the carrying out of such reported agreements. It was said that many of the matters set out as having been agreed upon were in fact individual decisions on the part of the large Tire Companies, and in particular on the part of Goodyear, which had been announced to the rest of the Tire Companies on a "take it or leave it" basis; or that Goodyear had merely made a show of consulting the other companies. A witness from one of the smaller companies stated to the effect that, without expressly making agreements, he had led other companies to believe he was subscribing to their prices and other arrangements and proceeded immediately to deviate and that when confronted with a deviation he had lied or bluffed his way out of it. It was stressed that no penalties or formal enforcement measures had been provided for with respect to the purported agreements set out in the minutes. It was strongly stated by the officials of the Tire Companies in their evidence that, notwithstanding what appeared in the minutes and in the correspondence, their respective Tire Companies were not bound by any purported agreement relating to the distribution and sale of tires and tubes, that they felt absolutely free to meet, and did in fact meet competition in any shape or form, and that the industry was in fact highly competitive.

Various witnesses stated emphatically that the prices, discounts and other terms upon which uniformity had apparently been achieved meant little or nothing; that real prices differed from paper prices and were the result of independent decision and that such prices varied from case to case even on the part of an individual company, depending upon the competition that had to be met. They pointed to the very considerable variations that obviously existed in the distributive systems of the different companies; to the confidential relations that existed in varying degrees between a company and its different classes of customers; and to the opportunities thus afforded for competitive action which could not be controlled.

Witnesses from the smaller companies gave evidence to the effect that although they were not sufficiently strong to oppose, openly, the policies of the larger companies and although they might give nominal adherence to these policies, they actually competed and held or endeavored to hold their shares of the market by making special arrangements or deals with their customers; and that in this respect the simplicity of their organizations gave them certain advantages by way of being able to bring the judgment of top management to bear quickly upon opportunities to secure business through a slightly better price.

The importance attached to tire meetings is apparent from the regular attendance at these meetings on the part of the senior officials of the Tire Companies. Further, the question whether an official truly represented his company might be a very difficult one if only isolated meetings were concerned, but in the face of the facts disclosed in this case including the regularity and frequency of all the attendances there can be no real doubt about corporate participation. Incidentally, the fact that the evidence sometimes leaves matters in the air, in the form of agreement upon recommendations to more senior officers, does not impair the over-all picture of agreements, only the details of which were settled in this way.

That the general purpose of these meetings and of the other dealings among the Tire Companies was to achieve as much uniformity as possible in matters of prices, discounts and terms, and that the Companies regarded seriously the arrangements into which they entered, is exemplified by the following minutes and correspondence.

The following is from the minutes of a sales managers' meeting held on June 16, 1937:

". . .

Concern was definitely expressed that meetings of Sales Managers too frequently resulted in a number of absentees and it was the opinion of the meeting that it was impossible to adopt and put in effect uniform plans for the correction of pricing conditions and other undesirable practices prevalent in the industry unless these meetings could be assured of having a full turn-out of Sales Managers, or authorized representatives of the various companies.

It was brought out that the pricing situation in Saint John has reached the stage where some immediate action is necessary to correct it and the District Managers responsible for sales in this territory are to be asked to take the necessary steps at the earliest possible date to get the situation straightened out.

". . ."

(Exhibit 2186)

The following is from a letter dated December 23, 1938 from A. B. Hannay, Secretary of the Association, to V. P. Reid, Vice-President of General:

"A meeting of the tire pricing committee is to be held on Thursday, December 29th, opening at 10 a.m. at the Association office. The business will be the consideration of problems arising out of the recently adopted program of obsolescence and new groupings. All companies are requested to be represented at this meeting, in order that decisions satisfactory to all may be reached and that uniformity in the carrying out of the new program may be assured.

". . ."

(Exhibit 2734)

The following complaint was made in a letter dated November 1, 1940 from V. P. Reid of General, whom the evidence shows as having been more often complained about than complaining, with respect to violations of industry agreements. The letter was directed to J. A. Livingston, then Sales Manager of Firestone:

". . .

Since the inception of our business in Canada your company has always been loud in your assertions that the rules and regulations of the Association should be abided by to the letter.

It has been my understanding, and I believe I am correct in saying there are minutes in the Rubber Association books stating that no company should take away from another company a Distributor by offering him a warehouse proposition.

". . ."

(Exhibit 2743E)

A similar matter was dealt with at a sales managers' meeting of May 10, 1945:

". . .

SOLICITATION OF ACCOUNTS: A company complained that one of its Maritime dealers had been taken away from it by a competitor who had given the dealer a distributorship. The complainant claimed that this was a direct contravention of the agreement against soliciting accounts which was re-affirmed at the meeting of March 9th, 1944.

The defendant company claimed that there was no breach of the agreement. It was their distinct understanding that the agreement in question covered only offers of distributorships to strictly retail dealers who were not in a position to function properly as distributors and in this case the dealer had the facilities to operate efficiently as a distributor.

". . ."

(Exhibit 2241)

Correspondence among officers of the same Companies also indicates the seriousness with which the arrangements were regarded, as is shown in a letter written on March 15, 1939, by L. E. Levey of Dunlop to his Ontario Branch manager.

". . .

After about an hour's discussion at a meeting yesterday it has been definitely decided to attempt to make common sense prevail and see if we can, with the support of our Branch Managers, keep this business on a profitable basis. Therefore, effective immediately 6.00/16 Third Line Tires may be sold for reconditioned used cars in dozen lots only and only in Toronto, Montreal, Ottawa, Hamilton, London and Windsor and only to dealers utilizing same for used cars. The price will be 10% off Dealers' Net Billing without further bonus.

Regardless of circumstances, we will not meet any price situation which might arise as we are of the belief that while the usual bait will be held out by those interested in securing these tires at cheap prices, those sitting around the table are most sincere in their agreement to bring this tire back to a reasonable level.

..."

(Exhibit 2653)

The clarification of the industry arrangement with respect to sales to manufacturers on the implement list made at a sales managers' meeting on July 21, 1939 (see Chapter 5, Section F) was preceded by the following correspondence from Goodyear and Goodrich, which indicates an intention that the arrangement would be exactly applied. On June 30, 1939 A. E. Grainger of Goodyear wrote to the secretary of the Association:

"We would strongly suggest that your letter of June 27th dealing with the extending of Manufacturers' Prices on truck and passenger type tires required as equipment on farm implements be reviewed by the Pricing Committee. Our reason for this suggestion is, that after reading the excerpt quoted in your letter of June 27th it seems to deal with two or three contentious points.

First, it seems to deal with the extending of Manufacturers' prices by a Rubber Company on truck and passenger car tires required for equipment on farm implements, because the Rubber Company involved does not manufacture a line of implement tires.

Second, it brings in the question of extending prices to London Concrete Machinery Company on implement tires, as well as passenger and truck tires.

Dealing with the first point, we interpret the policy to permit the supplying of passenger or truck tires assemblies to Implement Companies in place of implement tires, at the current going prices of passenger and truck tires.

We already have a complete list of the Tractor and Implement Companies entitled to Manufacturers' Original Equipment Prices. The Minutes very definitely set the policy of the basis of quoting.

This same letter refers to London Concrete Machinery Company. There ought not to be any confusion in this regard, as the Minutes of the Tire Meetings - October 27th, 1937 and August 29th, 1938, specifically outline the policy of supplying or quoting prices to London Concrete Machinery Company.

If London Concrete Machinery Company order tractor or implement tires, they are entitled to Base prices.

If Passenger or truck tires are required on machines, they are entitled to Preferred prices only. This is specifically shown on the List of Manufacturers entitled to price information, so there ought not to be any confusion as to the proper prices quoted London Concrete Machinery.

There is just a chance the excerpt contained in your letter of June 27th might cause some confusion, consequently we strongly suggest calling a meeting of the Pricing Committee for the discussion of this item, and any other items that might be brought forth."

(Exhibit 2692)

And on July 4, 1939 the following was sent to the secretary by C. R. Donaldson of Goodrich:

". . .

The London Concrete Machinery Company do not enter this picture in any way, nor is there any indication that anyone has offered them tires of any kind at prices other than those to which they are entitled.

". . . Their name is used only as an illustration.

Mr. Grainger's point that this matter be reviewed by the Pricing Committee is well taken, since the present ruling covering the sale of tractor and implement tires to those on the present base list is possible of misinterpretation. It reads:

'Tractor companies or distributors on the following list are entitled to Manufacturers' Base Equipment Prices for tractor tires and tires for farm implements only.'

The last five words of this ruling could be interpreted to mean those listed could be given base prices on truck or passenger tires provided they were required for farm implements, and this is one of the contentious points Mr. Grainger recommends reviewing.

". . ."

(Exhibit 2681)

It is difficult to reconcile the views expressed at the hearings about the non-existence of agreements with the plain language of the minutes and correspondence without narrowing the definition of an agreement to some formal contract or convention enforceable at law or carrying a stipulated penalty in case of violation. An agreement does not have to be formal or bolstered by enforcement or remedial measures to come under the provisions of the Combines Investigation Act, which contemplates "actual or tacit contracts, agreements or arrangements". The minutes of meetings of the Tire Division contain many references to agreements, and statements implying agreements, among the representatives of the Tire Companies present at the meetings. That the secretary of the meeting would have on occasion misunderstood some of the statements made or some of the more lively discussions carried out at the meetings, is quite likely; that he would on occasion have used the word "agreed" erroneously is also quite probable; but it is scarcely conceivable that he would systematically indicate, meeting after meeting, that agreements had been made or confirmed, using such terms as "agreed", "decided", "confirmed", "reaffirmed" and "adopted" if, in fact, no such agreement, arrangement or understanding had taken place, without any protest on the part of any of the Tire Companies present at the meetings.

In many instances the minutes record that no agreement was reached or that decision was deferred. Such expressions as "no action . . . taken", "agreed that it will be optional" and "agreed to study this question and discuss it thoroughly at the next meeting" are found in the minutes. Upon occasion the minutes also record outright failure to agree, as in the case of the introduction of a fourth line passenger tire by Goodyear despite the feelings of the majority of the Tire Companies, as described in Chapter 4.

Correspondence emanating from senior officials of some of the Tire Companies would indicate that the industry was aware of the fact that the dealings among the Companies came up to the level of agreements and arrangements which might constitute an infraction of the Combines Investigation Act.

On September 25, 1946 C. B. Cooper, Goodyear's General Sales Manager, sent the following confidential memorandum to his field organization:

"It has come to our attention that some minutes of branch or industry meetings clearly indicate discussions relative to matters relating to trade practices, particularly prices and 'deals'.

Under no condition, should such subject matter be indicated or recorded in the minutes or in any records, including correspondence, between companies or representatives of companies.

It must be clearly understood by all company representatives that such references could have serious repercussions if, for example, these minutes came to the attention of the Commissioner under the Combines Investigation Act."

(Exhibit 2488B)

A copy of the above directive reached C. N. Larsen of Gutta Percha, who sent the following to C. B. Cooper on October 9, 1946:

"Copy of your confidential memo of September 25th on the above subject has just reached me. It is, I assume, copy of a directive that you have sent to your own branches. There have been times when I have been disturbed at the revealing frankness of some of the minutes that come before me and I have instructed all branches that when they have anything to do with the writing of minutes, they should make them as brief and general as possible and then, if necessary, write me a covering letter giving further particulars.

I think I know the thought that was in your mind but I do not see how it is going to be possible to write minutes of a branch meeting without making reference to trade practices including prices and terms. Just look over the minutes of the Tire Sales Managers' Meeting of the 1st inst., held in Toronto, and you will see what I mean. There are half a dozen topics discussed at that meeting and recorded in the minutes which indicate industry arrangements in regard to prices and terms. I am afraid that Mr. McGregor of the Combines Investigation Department would consider these minutes just as incriminating as if they had dealt with the discussion in greater detail.

However, I think you are quite wise in sounding a word of caution."

(Exhibit 2488A)

A copy of Mr. Cooper's letter was also found in the files of Firestone (Exhibit 2621) and of General (Exhibit 2649).

Some time later a letter dated October 24, enclosing a copy of the minutes of a Montreal branch meeting held on October 21, 1946 together with the corrected copy of the minutes of a meeting held on September 9, 1946, was sent to Goodrich's head office by the company's Montreal Branch manager:

"You will please find attached your copy of the Minutes of the Meeting held by Tire Company District Managers on October 21st here in Montreal. . . .

Some of the representatives yesterday had received a letter from their Head Office advising that our Minutes should not carry any information indicating that we had made an agreement regarding prices and discounts as this might get into the hands of certain people who would then take it to Ottawa to the Legal Department of the Combines Act. It was, therefore, deemed advisable that our Minutes covering meeting held on September 9th should be re-written and completely eliminate paragraph three of said Minutes. Will you, therefore, substitute the attached Minutes of our September 9th meeting to the Minutes sent to you attached to my letter of September 19th."

(Exhibit 2777B)

I.G. Needles of Goodrich wrote back to the company's Montreal Branch manager on October 28, 1946:

"We have not sent any word out yet to District Managers regarding meetings with other company managers and procedure that should be followed.

No doubt this will be done in due course and when we do it it must go to everyone and all divisions.

. . .

There is no objection to having meetings and no objection whatever as far as I know to making statements regarding what each individual company's policy is.

The objection is to have a group of companies get together through their representatives' meeting for the purpose of discussing and agreeing upon prices, terms, discounts and other structures relating to the selling of merchandise, and in a direct or indirect sense of the word 'fixing' prices.

We'll be sending along more information on this subject later on, I expect, and in the meantime just keep that word 'agree' out of the Minutes and do not be a party to actually having anything on record regarding agreements on prices, terms and conditions of sale."

(Exhibit 2777A)

It may be accepted that, notwithstanding the arrangements described in the previous pages of this Part, competition existed in varying degrees in the tire market. This is reiterated in the oral evidence and supported by the documentary evidence. In the original equipment field the matter of confidential prices to certain automobile manufacturers has already been referred to. In the replacement field there were, no doubt, deviations from time to time from the settled practices. Also the smaller companies, whose executives were in a position to take a more direct hand in comparatively small transactions, conducted a certain amount of, to employ a phrase used in the evidence, "guerilla warfare" on the fringe of the field - up to the point of goading the larger companies into definite reprisals.

This competition was strongest in the sale of original equipment tires to the larger motor vehicle manufacturers. A degree also existed in the sale of tires through dealers to the motoring public. Restraint upon competition was strongest in the sale of replacement tires to certain large users, like passenger bus transportation companies and government and municipal departments and in that part of the original equipment market which affected small manufacturers of miscellaneous vehicles. Substantial restraint existed, however, over the replacement field generally as well as over part at least of the original equipment field.

With certain exceptions resale prices were not enforced at the retail level, although it was the policy of the Tire Companies to keep competition among dealers within the bounds which they considered tolerable. The exceptions relate to the sales described in Section E of Chapter 4. The common dealer price structure however, had substantial effect in preventing dealer competition from re-acting upon the manufacturers in the form of pressure for better dealer prices.

PART IV - ACCESSORIES AND REPAIR MATERIALS

Chapter 1 - Introduction

A. Description of the Products

The expression "Accessories and Repair Materials" includes a wide variety of rubber and other products for use in connection with motor vehicles, many of which are sold through the same channels as replacement tires. Automotive accessories include such rubber products as fan belts, radiator hose, car heater hose, windshield wiper tubing and car mats, with which this Part is concerned. The expression also ordinarily includes such non-rubber goods as car radios, heaters and batteries, with which this Report will not deal. Similarly, because of the different conditions applying to its sale, rubber tape will not be considered as falling within the division of accessories and repair materials for the purpose of this Report.

For purposes of description, repair materials may be subdivided into tire and tube accessories and tire repair and retread materials. The first sub-division comprises chiefly the following products: repair kits, criss-cross and covered cord patches, valve patches, rubber valves, flaps, rubber plugs, cold patching cement, quick cure tube gum, rim strips, mica, soapstone, dye and varnish. These products, like automotive accessories, are sold to dealers, which category includes tire dealers, service stations, garages and general stores not necessarily handling tires, and to jobbers. Certain limited lines are also sold to wholesale hardware and department stores. Broadly speaking, tire and tube accessories include all products necessary to the maintenance and repair, short of vulcanizing, of tires and tubes.

Tire repair and retread materials include such products as tread repair gum, cushion gum, tube repair gum, cord fabric, vulcanizing cements, camelback (the uncured rubber compound applied to the worn tire to make the new tread in the process of retreading) sectional air bags, (made of rubber and cord and used in the vulcanizing process) and air bag accessories. Some of these products are perishable and can be stored safely for not more than two to three month periods. They are therefore most frequently sold direct to tire repairmen and retreaders for use in connection with vulcanizing and other repair work.

The automotive accessories which are dealt with in this Part and the mechanical rubber goods that are dealt with in Part II overlap in the case of certain items like fan belts and radiator hose. The activities covered by Part II related chiefly to the distribution and sale of such articles as original equipment, i.e. for new vehicle use. This Part relates to their distribution and sale as replacement parts.

The arrangements to be described, relating to the distribution and sale of accessories and repair materials, are closely related to the arrangements described in Part III relating to the distribution and sale of replacement tires. The companies concerned are the same with

one exception. The "accessory representatives" who attended the "accessory meetings" and initiated, or worked out the details of the arrangements described in this Part, were responsible to the tire sales managers of the Tire Companies. The latter managers, as a body, supervised or reviewed the actions of the "accessory representatives", and themselves looked for guidance from, and from time to time referred specific measures to, the general managers of the Tire Companies, as a body. These relationships will disclose themselves as the Part proceeds. Generally speaking, the arrangements relating to accessories and repair materials may be regarded as complementary to those relating to tires and tubes. The existence of the former naturally follows from the existence of the latter; for it is easy to envisage restrictive arrangements relating to tires being upset if the Tire Companies remained free to seek competitive advantages in the sale of such closely allied goods as accessories and repair materials.

B. Sources of Supply

In 1948 there were about 20 companies in Canada manufacturing one or more of the products which fall within the category of rubber goods covered by this Part of the Report. However, the following tire and tube manufacturing companies have been the most important producers of accessories and repair materials for many years:

The Goodyear Tire & Rubber Company of Canada, Limited
Dominion Rubber Company, Limited
The B. F. Goodrich Rubber Company of Canada Limited
Gutta Percha & Rubber, Limited
Dunlop Tire and Rubber Goods Company Limited
Firestone Tire & Rubber Company of Canada Limited

Another tire and tube manufacturing company, namely, Seiberling Rubber Company of Canada Limited has sold an appreciable amount of accessories and repair materials manufactured by another company. These are the seven companies whose activities with respect to the manufacture, distribution and sale of accessories and repair materials are described in this Part of the Report. The expression "the Companies" or "the Tire Companies" used in this Part will be understood to refer generally to the seven companies although its use, in every context, will not embrace them all. The name of another company - Barringham Rubber & Plastics Limited - will appear from time to time in the documentary evidence to be referred to. This company manufactured and sold small quantities of tire repair materials, but no accessories.

Of the other firms which manufacture accessories and repair materials, only two had sales of such products in excess of \$50,000 in 1948 and none had sales in excess of \$175,000. The following table shows for most of the principal rubber products sold by the accessories and repair materials division of the industry the amount produced by the above listed companies, compared with the total amount produced in Canada for the years 1947 and 1948:

Table I

Production by the Companies Compared with Total Canadian Production of Principal Rubber Products sold by Accessories and Repair Materials Division of Rubber Industry

<u>Product</u>	<u>1947</u>			<u>1948</u>		
	Production by Companies Named (sell- ing value) (at the works)	Total Canadian Production (selling value) (at the works)	Percent of Total	Production by Companies Named (sell- ing value) (at the works)	Total Canadian Production (selling value) (at the works)	Percent of Total
	\$	\$	%	\$	\$	%
Rubber mats for automobiles	657,897	657,897	100	864,310	864,310	100
Fan belts for automobiles	1,052,874	1,052,874	100	660,180	660,180	100
Tire flaps	465,998	465,998	100	360,430	360,430	100
Air and Steam bags	68,345	68,345	100	58,176	58,176	100
Repair gums and fabrics	351,847	370,676	94.9	346,807	356,508	97.2
Tube repair kits	70,841	78,155	90.6	72,135	74,888	96.3
Camelback	477,739	509,638	93.7	683,938	713,528	95.9
Cements and adhesives	188,437	195,755	96.3	184,600	216,565	85.2
Other unvulcan- ized gums	116,462	248,639	46.8	141,951	314,726	45.1
Tire and tube patches	104,625	457,465	22.9	76,108	203,006	37.5

Substantial quantities of some of these groups of products have been imported, but detailed import figures in dollar terms are not available because of the impossibility of breaking imports down into separate categories. An indication of the relative importance of imports of one of the major groups can be gained however from the following comparison. The Dominion Bureau of Statistics records imports under the heading of "tire repair material of rubber" amounting to \$210,177 in 1947 and \$103,058 in 1948. This term includes, among other products, camelback, repair gums and fabrics, other unvulcanized gums, tire and tube patches, tire flaps and repair kits. The Companies with which this Report is concerned produced \$1,587,512 and \$1,681,369 worth of goods in these six categories in the years 1947 and 1948 respectively. Imports of "tire repair material of rubber" were therefore less (since some other products are included in this term) than 14 per cent in 1947 and 7 per cent in 1948 of production of such goods by the Companies concerned in this investigation. In addition these Companies themselves imported considerable quantities of some types of repair materials, which would be included in the D. B. S. import totals. The duty on most accessory and tire repair material items from the United States is 20 to 25 per cent. Exports of repair materials were inconsiderable.

The table below indicates the relative importance of the rubber companies there listed, in the sale of rubber accessories and repair materials of all kinds. The figures in this table, obtained from information submitted by such Companies to the Commission, are approximate and involve a considerable amount of duplication. Since it was not possible in all cases to eliminate purchased items from sales totals, all such items have been included, and although the table therefore indicates sales it does not necessarily reflect production.

Table II

Total Sales (Sales Tax Included) of Rubber
Accessories and Repair Materials except Tape

<u>Company</u>	<u>1947</u>	<u>1948</u>
	\$	\$
Goodyear	x	x
Dominion	849,000	804,000
Goodrich	809,000	671,000
Gutta Percha	521,000	561,000
Dunlop	336,000	356,000
Firestone	285,000	196,000
Seiberling xx	138,000	179,000
Barringham	19,000	10,000

x From information submitted to the Commission, Goodyear is known to be the largest single seller of accessories and repair materials, but the Company was unable to submit figures on a basis comparable with that of the other companies.

xx Seiberling did not manufacture. The figures given for Seiberling are purely sales totals.

A brief description of the products handled by each of the Companies follows:

Goodyear - sold a complete range of accessories and repair materials. Most of the rubber products sold by the Company were manufactured by Goodyear. In the main, accessories were sold to jobbers and repair materials to dealers, although Goodyear acted as an important supplier of some types of rubber accessories and repair materials to other rubber companies.

Dominion - was not a major factor in the production of accessories. For example, it did not manufacture fan belts or radiator hose although it purchased these items for resale from other rubber companies particularly Goodrich and Gutta Percha, and it did not handle car mats until after 1944. Also Dominion had less interest than some of the other companies in merchandising non-rubber accessories because a higher proportion of its tire sales were of private brands sold to large distributors who purchased batteries, etc. direct from the manufacturer. Dominion was important however in the manufacture and sale of repair materials. In this connection the wartime boom in the repairing and

retreading of tires which involved increased sales of camelback, vulcanizing cement, repair cord, cushion gum, etc. made Dominion relatively more important in the accessories and repair materials division as a whole than it had previously been. Dominion sold accessories and repair materials almost exclusively to its own tire dealers and its national distributors of tires and sold to jobbers only to the extent that its tire distributors were also automotive jobbers.

Goodrich - handled accessories and repair materials prior to 1947 as part of its Tire Division, a practice which continued to be followed by most of the other companies. Since that time it has established an Automotive Supplies Division which sells 12 major automotive lines, only two of which have to do with rubber products. Goodrich purchased important quantities of rubber goods from Dominion and imported car mats to some extent. Of all merchandise sold by this Division, Goodrich manufactured only about one-fifth. Unlike the other companies which sold primarily through their tire dealers and accessory jobbers, Goodrich sold exclusively through automotive wholesalers.

Gutta Percha - manufactured a wide range of rubber accessories and repair materials. Over 90 per cent of the camelback and other repair materials sold by Gutta Percha were manufactured by the Company. The principal items which Gutta Percha purchased for resale, most of which were specially branded, were fan belts, air bags, some car mats and some types of radiator hose. Perishable items were generally sold direct to tire dealers and repairmen, other products to accessory jobbers. In addition, Gutta Percha sold some quantity of accessories and repair material to other rubber companies.

Dunlop - also handled a comparatively wide range of rubber accessories and repair materials, most of which were manufactured by the Company. Dunlop made only occasional sales of any of these products to other rubber companies. The distinction in the marketing methods applying to the merchandising of perishable repair materials was also maintained by Dunlop.

Firestone - produced a more limited range of products, the principal items being camelback, cements for vulcanizing, cord cushion tread, certain types of small patches and other repair materials. It assembled repair kits and purchased valves, radiator hose and air bags for resale. Firestone sold primarily through tire dealers and did not sell accessories or repair materials on a jobber basis.

Seiberling - has not manufactured rubber accessories or repair materials since about 1943 although it has continued to sell a fair range of products, which it buys largely from Goodyear, to its own tire dealers. In most cases, such products were privately branded for Seiberling.

Varying quantities of many accessory and tire repair items are distributed to the public through such large firms as Canadian Tire Corporation Limited, The T. Eaton Co. Limited and The Robert Simpson Company Limited, and the evidence does not disclose to what extent, if at all, sales to

such firms are covered by the pricing structures described in this Part as being applicable to manufacturers, jobbers and dealers. The General Tire & Rubber Company of Canada Limited also sells to its own dealers some small quantities of accessory and repair materials which it obtains from Dunlop.

C. Wartime Controls

Wartime controls have been described in detail in Chapter 3 of Part I of this Report. Accessories and repair materials, like other goods, came under price controls at the beginning of December 1941. Certain accessories, like hose and windshield wiper tubing, appear to have been released from price controls in July 1946, and car mats by late November 1946. Tire repair material, including camelback, cement, patching and reliners appear to have been released from price controls by January 13, 1947. All price controls, as far as accessories and repair materials are concerned, ceased on April 2, 1947. When the Rubber Conservation and Technical Committee was established in December 1942, a Tire and Tire Accessories Sub-Committee was also established to advise the Rubber Controller with respect to the substitution of synthetic rubber for crude natural rubber in the manufacture of the rubber products for which such Sub-Committee was established. As in other divisions of the industry, the Sub-Committee was available to the rubber control authorities with expert advice and information throughout the period of production controls.

Chapter 2 - Price and Other Arrangements Relating to Accessories and Repair Materials

A. General

During the period covered by this investigation, from 1937 to 1948, the Companies have been members of the Rubber Association of Canada (the "Association") and in their capacities as manufacturers or merchandisers of accessories and repair materials, have made up the Accessory Group of the rubber industry. As such Group the Companies have, during the relevant period, held a series of meetings which have been attended from time to time by all the Companies in the Group. As with tire meetings, the record of the accessory meetings was kept by A. B. Hannay, the former Secretary and Manager of the Association and subsequently by both G. B. Smith, Mr. Hannay's successor, and A. U. Oakie, the Assistant to the Secretary and Manager of the Association. In addition to acting as recording secretary of the accessory meetings, the above named have rendered to the Accessory Group much the same services that they have rendered to the Tire Group, such as making up agenda for the meetings, relaying information or decisions from one party to another, preparing lists of accounts and generally acting as a clearing house for the Group. It should be added that the minutes of the meetings of the Accessory Group were among those that were reviewed in the summer of 1947. Under instructions from G. B. Smith, A. U. Oakie who had acted as Secretary of the accessory meetings since early in 1946 reviewed, in the summer of 1947, all the minutes of the accessory meetings held since he had taken over for the purpose of deleting reference to prices and agreements. This matter is further described in Section C of this Chapter.

Because of the nature of the products themselves the variety of matters covered at accessory meetings has not been as extensive as that covered at tire and tube meetings. Generally speaking, the discussions have centered on the establishment of dealer prices for the products and the setting of jobber and other discounts. The representatives from the various Companies attending these meetings have generally been the managers of, or other responsible employees in, the accessories branches of the Companies. As the accessories branches were in most cases under the supervision of the Tire Divisions of the Companies, tire sales managers and in some cases tire general managers at their meetings have from time to time, as already indicated, dealt with decisions or recommendations referred to them from accessory meetings.

B. Period Before December 1941

An idea of the range of tire accessories and repair materials sold by the Companies will be derived from the following minutes of an accessory meeting held on January 6, 1937 at which prices were agreed upon with respect to some 36 items, representing a general upward revision from the prices agreed upon at a meeting held on May 19, 1936, this being the last previous meeting for which the Commission received minutes:

"M I N U T E S

ACCESSORY MEETING

Toronto, January 6th, 1937.

An Accessory Meeting was held at 9.30 a.m., Wednesday, January 6th, 1937.

There were present: Messrs. G. Macpherson, Gutta Percha; G. D. Morison, C. B. Cooper, Goodyear; C. G. Mynahan, Firestone; P. Irwin, J. A. Lucas, Dominion; I. G. Needles, Goodrich; T. M. Ponton, Dunlop.

Mr. Morison was appointed chairman.

Prices were adopted, effective Thursday, January 7th, 1937, for tire accessories, repair-kits and tire repair-materials.

The following prices are effective Thursday, January 7th, 1937:

<u>CAMELBACK</u>	East	Fort William and West
Shipment of 500 lbs. or more	.28 $\frac{1}{2}$ ¢ per lb.	.30 $\frac{1}{2}$ ¢ per lb.
" " less than 500 lbs.	.34¢ " "	.34¢ " "
Ready Built Camelback, any quantity	.33¢ " "	.35¢ " "
Passenger Car earned bonus applies.		

CORD BREAKER FOR RETREADERS:

25 lb. rolls	.65¢ per lb.
Passenger Car earned bonus applies.	

PASSENGER TIRE REBUILDING FABRIC

Gross woven construction, frictioned two sides, skim-coat two sides.

5 lb. rolls	\$1.10 per lb.
10 & 25 lb. rolls	1.05 " "
Passenger Car earned bonus applies.	

PASSENGER TIRE CORD FABRIC

Skim-coat two sides

5 lb. rolls	\$1.10 per lb.
10 & 25 lb. rolls	1.05 " "
Passenger Car earned bonus applies.	

PASSENGER CAR TREAD GUM - 1/16" Gauge

5, 10 and 25 lb. rolls (Black or Gray)

1 lb. roll (White)	.65¢ per lb.
Passenger Car Bonus applies.	\$1.00 " "

PASSENGER CAR CUSHION GUM

5, 10 lb. rolls - 1/32" gauge	.95¢ per lb.
2 lb. cans - 1/2" wide - Cushion Gum Strips -1/32" ga.	2.25 " can
5, 10 lb. rolls, 1/64" gauge	1.30 " lb.

Passenger Car earned bonus applies.

CUSHION GUM - For patch manufacturers only - 1/64" gauge
 Deliveries in not less than 100 lb. lots of not less
 than 25 lb. rolls
 No Bonus Applies.

.75¢ per lb.

QUICK CURE TUBE REPAIR GUM - Red or Black - 1/32" gauge

1 lb. cartons	\$1.05 each
Jobber - 33-1/3% and 2%; Dealer - Earned bonus	
5 lb. rolls	.85¢ per lb.
Jobber - 2% cash only; Dealer - Earned bonus	

CURED BACK GUM - 3/64" gauge

1 lb. cartons	\$1.05 each
Jobber - 33-1/3% and 2%; Dealer - Earned bonus	
5 lb. rolls	.85¢ per lb.
Jobber - 2% cash only; Dealer - earned bonus	
100 lb. lots (25 lb. rolls or over) (no bonus)	.70¢ " "
For tube repair kit manufacturers only, the following (no bonus) 500 lb. lots (25 lb. rolls or over)	.50¢ " "

TRUCK TIRE TREAD GUM - BLACK - 1/16" gauge, 10 lb. rolls

Jobber - 2% cash only; Dealer - Earned bonus	.70¢ " "
--	----------

TRUCK TIRE CORD FABRIC, FRICTION BOTH SIDES

10 lb. rolls	\$1.20 per lb.
Jobber 2% cash only; Dealer - Earned bonus	

TRUCK TIRE CUSHION GUM - 1/32" gauge - 10 lb. rolls

Jobber - 2% cash only; Dealer - Earned bonus	\$1.05 " "
--	------------

TRUCK TIRE VULCANIZING CEMENT -

1 Pint can	.30¢ each
1 Quart "	.50 "
1 Gallon "	\$1.40 "
Jobber - 33-1/3% on Pts. and Qts. only;	
Dealer - Earned bonus	

PASSENGER CAR VULCANIZING CEMENT

1 gallon can	Jobber - 2% cash only	\$1.35 each
5 gallon can	" " " "	6.25 "
45 gallon drum for retreading accounts only (bonus)		.80¢ per gal.
One lot delivery of nine 5-gallon cans (bonus)		.90¢ " "
White sidewall cement - 1 pint (American size)		.55¢ each

RED PATCHING CEMENT - 45 gal. drum for patch m'f'rs. .85¢ per gal.
(No bonus)

QUICK CURE VULCANIZING CEMENT

1 quart can - red	Jobber 33-1/3%; Dealer earned bonus	.50¢ each
1 quart can - black	" 33-1/3%; " " "	.50¢ "
1 gal. can - black	" 2% cash only;" " "	1.35 "
5 gal. can - black	" 2% " " ;" " "	6.25 "

COLD PATCHING CEMENT

3/4 x 4 tubes - one dozen in a display carton	.65¢ per dz.
1 x 5 tubes - " " " " "	.90¢ " "
1 x 6 tubes - " " " " "	1.10 " "
1/4 pint cans (with brush)	2.65 " "
1 pint cans	4.35 " "
1 quart cans	.65¢ each
Jobber - 33-1/3% on above; Dealer - Earned bonus	
1 gallon cans - Jobber 2% cash only;	\$1.75 each
5 gallon cans - " 2% " "	7.75 "
45 gallon drums for tube repair kit accounts (No bonus)	.90¢ per gal.
Drums: A charge of \$5.00 each to be made for drums	

SOAPSTONE - 10 lbs. Jobber - 33-1/3% .05 per lb.

VALVE PATCHES

#1 for 3, 3½, 4, 4½ and 5" tubes	Jobber - 33-1/3%	\$1.30 per doz.
#2 for 6" tubes and larger	" - 33-1/3%	2.10 " "

PASSENGER TIRE SECTIONAL CORD AIRBAGS - 1/5 CIRCLE

Size "A"	\$5.65 each	Size "M"	\$8.50 each
" "C"	6.00 "	" "F"	8.50 "
" "D"	6.60 "	" "G"	9.25 "
" "E"	7.10 "	" "H"	11.85 "
" "K"	7.10 "		
2% cash only			

PASSENGER TIRE SECTIONAL CORD AIRBAGS - 1/6 CIRCLE

Size "GG"	\$9.25 each	Size "OO"	\$13.00 each
" "HH"	11.85 "	" "RR"	16.00 "
Cash discount only.			

COMBINATION AIR AND STEAM CORD BAGS FOR TRUCK TIRE REPAIRS

		Without Stem or Fittings
Sizes "U" and "U"- "U"	- 1/5 Circle	\$17.65
" "V" " "V"- "V"	- 1/4 "	21.15
" "W"	- 1/4 "	24.15
Cash discount only.		

AIR BAG ACCESSORIES:

Inlet-stem with needle-valve	\$4.00 each
" " without " "	3.00 "
Outlet-stem with needle top	2.65 "
" " without " "	2.50 "
#0452 Angle Adapter	.60¢ "
Stems for passenger car bags	.80¢ "
6-ft. length steam generator hose equipped with Eastman compression fittings, swivel pump connections and iron pipe thread	3.50 "
Cash discount only.	

Note: The fittings for a combination steam and air bag consist of one inlet-stem with needle valve, one outlet-stem with needle top and two angle adapters.

NEW MATERIAL CORD PATCHES

2-5/8" x 2-5/8" - 2-ply	.60 per doz.
4" x 4" - 2-ply	.80 " "
5 1/2" x 5 1/2" - 4-ply	1.70 " "
7" x 7" - 4-ply	3.00 " "
9" x 9" - 4-ply	4.80 " "
11" x 11" - 6-ply	9.00 " "

Jobber - 33-1/3%; No quantity discount.

Dealer - Discount - half gross 10%; one gross 15%;

2 gross 20%. Quantity prices apply on assorted sizes and to mixed new-material and old-material patches.

COVERED CORD PATCHES (pulled or split)

Open prices are recommended for these. (Jobbers may be quoted 33-1/3% and dealers the same discounts and terms as for new-material patches.)

TOP DRESSING

1/2 pint cans	\$4.95 per doz.
1 " "	.75 each
1 quart "	1.30 "
1 gallon "	4.15 "

Jobber - 33-1/3% - No quantity discount.

Dealer - Discount - half gross lots 10%; gross lots 15%.

TIRE VARNISH

1 pint cans	\$4.40 per dz.
1 quart "	.70 each
1 gallon "	2.10 each
5 gallon "	9.25 each

Jobber - 33-1/3% - No quantity discount

Dealer - Discount - half gross lots 10%; gross lots 15%;
(single or assorted sizes)

TIRE DYE

1 quart can	.85¢ each
1 gallon can	3.00 "
5 gallon can	12.00 "
Jobbers - 33-1/3%.	

MICA OR SOAPSTONE

In 2-3/8" x 3-7/8" sifter top tube - Jobber 33-1/3%	\$1.50 per doz.
Dealer discount - half gross lots 10%; gross lots 15%.	

RIM STRIPS OR RIM BANDS

For 17"-21" dia. rims, 1-5/16" wide	\$1.60 per doz.
For 15" and 16" air-wheel tires, 1 1/2" wide	1.60 " "
Jobbers - 33-1/3%.	

RUBBER TRUCK-TIRE OR PASSENGER-TIRE FLAPS (endless)

As sizes and types of these, as produced by various companies, do not conform, no price list is set up, but it is recommended that each company adhere to its present prices for these.

PASSENGER CAR FLAP MATERIAL (flannel or rubber)

2 1/2" wide	\$5.75 per 100'
3" "	5.85 " "
3 1/4" "	7.50 " "
3 1/2" " "	7.50 " "
4" "	9.75 " "
4 1/2" "	12.25 " "

Jobbers - 33-1/3%; Dealers discount - 10% half gross, 15% gross lots. Quantity prices apply on assorted sizes to dealers.

ALL-SIZE BUT-END FLAPS (flannel or rubber)

Balloon Tires

Tire Size	Rim Dia.	
4.40 to 5.50	19" to 21"	.70¢ each
4.40 to 5.50	19" to 23"	.70¢ "
6.00 to 7.50	19" to 21"	.80¢ "
6.00 to 7.50	19" to 23"	.80¢ "

High Pressure Tires

3 1/2" and 4"	.70¢ each
4 1/2" and 5"	.80¢ "

Jobber - 33-1/3%; Dealer discount - 10% in half gross, 15% in gross lots. Quantity prices apply on assorted sizes to dealers.

RUBBER VALVES - 6 to a box Jobber - 33-1/3% \$1.71

RUBBER TIRE PLUGS - Box of 25 with applying needle ,95¢
Jobber - 33-1/3%.

TUBE REPAIR KITS

Pocket Kit containing 24 sq. in. cured-back stock;
twelve $1\frac{1}{4}$ " bevelled patches; $3/4$ " x 4"
tube of patching cement \$2.10 per doz.

Regular Kits containing 36 sq. in. cured-back stock;
a $3/4$ " x 4" tube of cold patching cement 1.90 " "

Small Kits containing 24 sq. in. of cured-back stock
and $3/4$ " x 3" tube of cement 1.60 " "

For above three kits - Jobber 33-1/3%;
Dealer - for $\frac{1}{2}$ gross 10%; 1 gross 15%; 2 gross 20%.

Shop Size Kits containing 150 sq. in. cured-back stock,
 $\frac{1}{4}$ pt. tin cold patching cement, with brush
with 100 $1\frac{1}{4}$ "x $1\frac{1}{4}$ " bevelled patches \$1.45 each
with 60 $1\frac{1}{4}$ "x $1\frac{1}{4}$ " " " 1.10 "

Jobber - 33-1/3%; Dealer - No quantity discount.

. . .

The cash discount of 2% for payment by 10th prox. applies to all above. Earned passenger car bonus to be allowed dealers only on all classes of accessories and repair goods except fan-belts, radiator hose, rubber valves and Schraeder and Dill parts."

(Exhibit 2299)

As shown by the above, the meetings dealt with prices, bonus and discounts to dealers, jobbers and manufacturers and, as in the cases of tube repair kits and passenger car cushion gum, described certain specifications of the products to which such prices applied.

The prices for camelback were further raised substantially at an accessory meeting held on April 30, 1937 which was attended by representatives of Gutta Percha, Seiberling, Firestone, Dunlop, Goodyear, Dominion and Goodrich:

"Camelback: The following prices were set, effective May 1st, 1937:

	<u>East</u>	<u>Fort William and West</u>
Shipment of 500 lbs. or more	32¢ per lb.	34¢ per lb.
" " less than 500 lbs.	38¢ " "	38¢ " "
Ready Built Camelback, any quantity	37¢ " "	39¢ " "
Passenger Car earned bonus applies.		

. . ."

(Exhibit 2298)

At that same meeting the accessories representatives discussed merchandising conditions in the Toronto and Montreal districts:

" . . .

Repair Materials Situation: It was agreed that in the Toronto and Montreal districts there were exceedingly disturbed conditions in the merchandising of tire repair materials. It was stated that a major cause of disturbance was the granting of lower than agreed rates to some large outlets that, while ostensibly buying for their own use in repairing operations, resell at low prices to repair men to whom tire companies are endeavouring to sell repair materials at regular prices. It was further agreed that repair materials could be obtained in the United States at prices that enable laying into Canada at costs far below the list prices of Canadian-made goods. It was agreed that the price situation should be cleared up prior to any general revision of repair materials prices. There should be an undertaking by companies to strictly adhere to any program that may be decided upon. Any program that might be agreed upon would have to be one that all companies could live with.

It was agreed that further study should be given to both the domestic and the import situation applicable to tire repair materials, that there should be a reference of the problem to the executives of the companies and another meeting will be held early in the second week of May.

. . ."

(Exhibit 2298)

Subsequent to that accessory meeting a meeting of general sales managers of the Tire Companies was held on May 18, 1937 which proposed an advance in the prices of tire accessories and repair materials. The following is an extract from the minutes of that meeting dealing with the subject:

"Tire Accessories and Repair Materials: A meeting of the Accessory Committee will be called at once to consider making an approximate 7½% advance in the prices of tire accessories and repair materials with the exception of fan-belts, radiator-hose, car-mats, air-line hose, friction tape, camelback and bulk repair materials generally."

(Exhibit 2187)

The accessory representatives met on May 26, 1937 and implemented the directive of the general sales managers by advancing prices on numerous lines of tire accessories and repair materials. The minutes follow closely the form of the minutes of January 6, 1937 (Exhibit 2297).

The prices on camelback which had already been raised on April 30, 1937 were left intact.

The prices of camelback did not hold firm however during the year, as is indicated by the minutes of a "Repair Materials Meeting" held on December 6, 1937:

". . .

Camelback: There was considerable discussion as to the price of this, which was set on May 26th last at 32¢ per lb. for shipments of 500 pounds or more. A quotation of 28¢ to a Toronto account was met, which resulted in other companies announcing price reductions. It was agreed that the 32¢ price barely gave a profit and should be continued. Goodyear stated that after they had received from other companies the announcement of the new and lower prices, they had been compelled to follow and had instructed their branches the latter part of the week as follows:

	<u>East</u>	<u>West</u>
Single shipments of 500 lbs. or over	28¢	30¢
" " " less than 500 lbs.	34¢	34¢
Ready built, any quantity	33¢	35¢
The above carry bonus.		

Mr. Livingston of Firestone objected to these prices as being too low in view of costs.

Mr. Cooper of Goodyear said that while two companies stated that they had sales commitments at the 28¢ price, in view of the correspondence that had been exchanged, he was satisfied that every company by now had such commitments and the price could not now be changed, because a company could not fulfil commitments to some accounts at 28¢ and charge other competing accounts a higher price.

It was asked that General Managers pass on this situation.

". . ."

(Exhibit 2294)

The accessories managers at the same meeting agreed on the prices of white sidewall tire paint and cement:

". . .

White Sidewall Tire Paint, It was agreed would be priced at \$1.05 per American pint to dealers with 25% discount to jobbers.

". . .

Vulcanizing Cement:

Red Patching Cement: It was agreed that for 45 gallon drum lots and for 9 five-gallon container lots, because of high shipping charges (\$12.00 freight to Regina for a 45 gal. drum), to Western points the charge should be higher. It was agreed that, effective at once prices will be

	<u>East</u>	<u>West</u>
Vulcanizing & Red Patching Cement 45 gal. drum	85¢ gal.	\$1.00 gal.
Shipments of 9 five-gallon cans	95¢ "	1.10 " "

(Exhibit 2294)

These minutes also indicate price arrangements in respect of one of the automotive accessory items:

"Fan-Belts: Goodyear and Goodrich will report on the possibility of eliminating price differentials from the fan-belt set-up.

. . ."

(Exhibit 2294)

The general managers at a tire meeting held on December 7, 1937 confirmed the new prices on camelback:

" . . .

Tire Repair Materials: The following was agreed to:

	<u>East</u>	<u>West</u>
Camelback - single shipments of 500 lbs. and over	28¢	30¢
" " " less than 500 lbs.	34¢	34¢
Ready built, any quantity	33¢	35¢
The above carry bonus.		

It was stated that the above prices are too low, in view of production and selling costs and were agreed to only because of existing commitments at these rates. It was agreed that the prices should be advanced at the first opportunity and that there shall be a meeting of Sales Managers, with repair and accessory materials men present to review the entire list of repair materials and accessories.

. . ."

(Exhibit 2179)

No general changes in tire accessories and repair material prices are recorded in the evidence as having taken place during 1938. Three items of automotive accessories were dealt with at a "Repair Materials Meeting" of January 25, 1938:

"Fan Belts: Agreed that Goodyear and Goodrich will report on the possibility of eliminating price differentials from the fan-belt set-up.

Car-Mats: Agreed that the arrangement set out in the minutes of November 10th, 1937, will continue for a time, and that the car-mat situation will be reviewed again about May 1st, 1938.

Radiator Hose: Agreed to continue the present prices and that the situation as to importations will be investigated.

. . ."

(Exhibit 2293)

The meeting of November 10, 1937 had discussed car mats in relation to Gutta Percha's practice of allowing special discounts for quantity purchases and it was agreed that any company had the right to meet such discounts but the other companies expressed the intention not to do so except in cases where it appeared essential (Exhibit 2295).

A meeting of general sales managers of the Tire Companies held on October 13, 1938 dealt with the prices of cold patching cement:

". . .

COLD PATCHING CEMENT: Agreed that one-gallon cans of cold cure cement may be sold to jobbers at 33-1/3% discount from list, as pints and quart cans are now being sold.

. . ."

(Exhibit 2164)

An accessory meeting held on February 3, 1939 "confirmed" the prices on the whole range of tire accessories and repair materials, the prices on camelback being left at 28¢, 34¢ and 33¢ for eastern deliveries and 30¢, 34¢ and 35¢ for western deliveries whilst the prices of the other materials were almost all the same as those which had been established at the meeting of May 26, 1937 (Exhibit 2291). The same meeting agreed upon certain "courtesy discounts" between Tire Companies, their branches and distributors. This discount was vetoed by a sales managers' meeting of March 14, 1939 (Exhibit 2158). A. B. Hannay of the Association relayed the decision of the sales managers in a letter to the Companies dated March 16, 1939:

". . .

Courtesy Discount on Accessories and Repair Materials: Minutes of an accessory division meeting of February 3, 1939, were referred to. These proposed a courtesy discount of 5% on accessories and 15% on tire repair materials by companies, their branches and distributors on purchases from them by other companies, their branches and distributors. This was intended to provide only an emergency convenience, but it was reported that a branch of one company offered the courtesy discount as an inducement to obtain the business of another company's distributor. It was agreed that while the courtesy discount should apply between companies, their branches and distributors to purchases of tires and tubes, that there would be no courtesy discount applicable to repair materials and accessories, including radiator hose and fan-belts."

(Exhibit 2289)

Agreements were arrived at through correspondence as well as at meetings. In 1939 Goodrich added a new line of tire accessories to its products, namely, white sidewall tire paint. On that occasion, I. G. Needles of Goodrich wrote to the secretary of the Association on May 30, 1939 with copies to the other companies interested:

"Dear Sir: White Sidewall Tire Paint

We are just releasing a new line of the subject material, and find after investigation that if we are to sell it at all, we must have a different price basis than now exists.

We find that Whizz are selling 1-pt. cans of this material at the following prices:

List	-	\$1.25 ea.
Dealer	-	.83 $\frac{1}{2}$ ea.
Jobber	-	.62 $\frac{1}{2}$ ea.

The present program is as follows:

Dealer	-	\$1.05 ea.
Jobber	-	.78 ea.
No list established.		

Our suggested prices are set up on a basis of the same retail list as adopted by Whizz, that is, \$1.25, with the standard discounts applying on some of our chemical lines, with which it will bracket.

Therefore, we would like to adopt the following program:

Suggested retail list	- \$1.25 ea.
Single unit shipments to dealers	- .79 ea.
Standard package, 6 units - dealers	- .75 ea.
Jobber price	- .56 ea.

We will appreciate having your comments as to whether this is satisfactory."

(Exhibit 2338)

On June 12, 1939 R. M. B. Millar, who was then Sales Promotion Manager of Goodrich's Tire Division, wrote to A. B. Hannay, with copies to the other companies interested:

"White Sidewall Tire Paint:

Under date of May 30th, 1939, we wrote all companies notifying them of our intention to add White Sidewall Tire Paint to our regular Accessory Line, and suggesting a revision of the present prices.

Replies have been received from all companies indicating their agreement with our suggested Resale Program, which is as follows:

<u>Description</u>	<u>Std. Pkg.</u>	<u>Sugg. Retail Price</u>	<u>Dealer Price</u>		<u>Jobber Price</u>
			<u>Broken Pkg.</u>	<u>Std. Pkg.</u>	
1-pt. lithographed can (16.65 Imp. ozs.)	6	\$1.25	\$0.79	\$0.75	\$0.56 "

(Exhibit 2337)

The appearance on the market in 1939 of a substitute for camelback that was being supplied by Firestone and Dunlop at prices substantially below those prevailing for camelback resulted in the matter being discussed at an accessory meeting held on July 28, 1939:

"Camelback and Repair Gums: There was discussion of a letter from Mr. Head of Gutta Percha, which stated he understood that Dunlop and Firestone are supplying a material that takes the place of camelback at 18¢ per pound. Plus sales-tax, this would make the cost 19.4¢ per pound. He stated that there was no profit at this price; that it tended to demoralize the camelback situation and eventually would reduce prices of regular repair materials. He suggested an understanding on competing materials to avoid losses.

Firestone stated that their material was for side-wall repairing, was only 3/32" in thickness and could not be used satisfactorily for retreading as several thicknesses would have to be superimposed. Only one account was using their material and owing to special equipment being

required for its use, he did not think that there would be a demand for it from the repair trade which would threaten the position of camelback. The name of the Firestone material was 'Tread Material and Liner'.

Dunlop stated that its material was called 'Black Gum'; it was 1/8" thick and was made use of in large quantities in England, Australia and elsewhere. While priced at 18¢ per lb., sales-tax being extra brought the cost up to 19.44¢ per lb. and it was not subject to volume bonus or 2% cash. Camelback price was sales-tax included with bonus allowed and 2% cash. Only two accounts were using the material. Dunlop had gone into it because it could be and was being imported. At 18¢ without tax, bonus or cash discount, there was a satisfactory profit in producing the material which was not intended for or adapted to retreading operations. It did not have the qualities for that use.

Mr. Head stated that the Gutta Percha laboratory had analyzed and tested the Dunlop material and had found it fully equal to camelback. It was being used for retreading and recapping.

Price comparisons of material in question with prices for other materials of similar use was made as follows:

Black Gum 18¢ per lb. without and 19.44¢ with sales-tax,
no bonus, no 2% cash.

Camelback sales-tax included price 28¢ list and 26¢ in Toronto,
with bonus and cash discount allowed.

Black Tread Gum 70¢ per lb., bonus and cash discount allowed.

Sidewall Gum 45¢ per lb., bonus and 2% cash allowed.

Mr. Cooper maintained that at these prices the use of this new material would spread and would eventually replace camelback, the price of which was not too low, when production costs were considered. It would certainly supplant the two other repair gums referred to. Without some price equalization being applied to these competing materials, companies not now producing the new material would have to take such steps as they deemed best to meet the situation.

This view was supported by the representatives of Gutta Percha, Dominion, Goodrich and Seiberling.

It was decided to recommend to sales managers and general managers that hereafter a company should not put out a new type of repair material without informing other companies.

..."

(Exhibit 2287)

There is no evidence on record of the recommendation of the meeting respecting notification to be given to other companies before introducing a new type of repair material being put into effect. Whether or not as a result of the situation created by the new product, the price of camelback in any quantity was set at east 28¢ per pound and west 30¢ per pound at a sales managers' meeting held on October 5, 1939 (Exhibit 2146).

On November 29, 1939 S. G. Nicholls of Goodyear sent the following letter to Goodrich and the other interested companies respecting the price of mats which had been established by Mr. Head of Gutta Percha and Mr. Nicholls:

"As suggested at the last meeting in Mr. Hannay's office, Mr. Albert Head and myself were to discuss the matter of prices on Mats. We held a meeting to-day and have set up new prices which are attached.

In view of Gutta Percha selling Flat Mats for cars, for which we sell a Contour Mat, it was decided to reduce the price of the Contour Mats 25¢ each, while the Flat Mats were increased approximately 10%. In each instance the figures were rounded out, some being under and some being over the 10%.

In connection with the release of the prices, it is suggested that the prices be released by Air-Mail tomorrow, Thursday, November 30th.

Unless we have objection from someone tomorrow, we shall consider that the prices are agreeable to all and that everyone interested will make them effective at once."

(Exhibit 2336A)

Attached to the letter was a list giving prices for various types and sizes of mats (Exhibit 2336B).

The merchandising of automotive accessories, such as radiator hose and fanbelts, with particular reference to importations, was discussed at an accessory meeting of November 21, 1939 (Exhibit 2286). The matter was referred to a committee which was to report in early 1940. An accessory meeting of March 4, 1940 decided that there was no case for a change in prices of fanbelts and radiator hose:

"The accessory meeting of November 21st, 1939, named Goodyear, Dunlop, Gutta Percha, Dominion and Raybestos as a committee to report upon the accessory pricing structure in relation to jobbers and importers and also the resale policy of car manufacturers.

To-day there was a meeting of the committee, at which were present: Messrs. W. S. Cowell, Raybestos; K. Macpherson, Gutta Percha; G. L. McCrea, S. G. Nicholls, G. D. Morison, Goodyear; W. M. Nelson, J. D. Tenison, Firestone; H. D. Howitt, Dominion; R. M. B. Miller, F. H. Stafford, Goodrich.

Mr. Miller was appointed chairman.

Fan-Belts and Straight Radiator Hose: After consideration of domestic and import competition, it was agreed that there was no warrant for changes in prices for straight radiator hose or fan-belts. There will be further enquiry into the buying prices of fan-belts by one or more mail-order houses, that enable them to catalogue prices below those at which standard companies sell to their regular retail outlets.

..."

(Exhibit 2285)

The same meeting made the following recommendation respecting retail prices of accessory items:

"...

Suggested Retail Accessory Prices: It was recommended that company accessory price-lists for dealer buying also should set out suggested retail prices. The basis recommended for suggested retail prices to be 50% over prices to dealers, to provide a 33-1/3% gross profit in retail selling. For items of 50¢ and under the retail price to be set to the nearest cent, and for items over 50¢, the price to be set to the nearest five cents.

..."

(Exhibit 2285)

The minutes conclude with the item:

"Repair Material Prices were not recommended for change."

(Exhibit 2285)

The matter of suggested retail prices came up at a sales managers' tire meeting held on June 4, 1940:

"...

Suggested Retail Accessory Prices: The Accessory meeting of March 4th recommended that company accessory price-lists for dealer buying also should set out suggested retail prices. The basis recommended for retail prices to be 50% over prices to dealers, to provide a 33-1/3% gross profit in retail selling. For items of 50¢ and under the retail price to be set to the nearest cent, and for items over 50¢, the price to be set to the nearest five cents.

Agreed that it will be optional for companies to adopt this plan.

..."

(Exhibit 2143)

Various accessory and repair material items sold by the Companies to tire dealers were subject to yearly bonus for volume in that these items were included with the sales of passenger car tires and tubes to the dealer for the purpose of computation of such bonus at the end of the tire year in the month of October. It was felt that this placed the accessory jobbers in a difficult position since in many cases the prices of accessory items to dealers when subject to the bonus for volume were lower than the jobbers could offer. The matter was discussed at the accessory meeting of March 4, 1940:

". . .

Volume Bonus on Accessories: It was agreed to recommend that companies consider discontinuance of the payment of volume bonus to tire dealers on sales of all accessories; this in order to make the selling prices to dealers and jobbers competitive. The present selling prices of accessories to dealers, when subject to volume bonus, gives them a lower price than accessory jobbers can offer. This recommendation does not apply to repair materials.

". . ."

(Exhibit 2285)

That matter was also referred to the sales managers at their meeting of June 4, 1940. The following is the excerpt from the minutes of that meeting dealing with volume bonus on accessories:

"Volume Bonus on Accessories: Agreed that next fall consideration should be given to the recommendation of the Accessory Division that companies consider discontinuance of the payment of volume bonus to tire dealers on sales of all accessories; this in order to make the selling prices to dealers and jobbers competitive."

(Exhibit 2143)

The proposal respecting the discontinuance of the bonus on accessories to dealers was recommended against at an accessory meeting held on July 24, 1940 (Exhibit 2284). No action was taken at this time but the matter, as will be seen, was brought up again in 1945 and finally settled in 1947.

In early 1940 dealers' and jobbers' prices as well as terms of payment were established on various sizes and types of tire reliners. The following letter from G. K. Macpherson of Gutta Percha to A. B. Hannay of the Association dated May 28, 1940 shows how these prices were established:

"As requested in your telephone conversation of yesterday afternoon, we give you the Reliner price set-up as agreed to by Goodrich, Dunlop and ourselves, together with the National Rubber Company. This was effective on January 22nd, 1940. Later, both Seiberling and Firestone advised that they were interested in the

sale of Reliners, and the same information was given to them, and prices as given were adopted as part of their sales programme

<u>'De Luxe' Reliners</u>		<u>Dealer</u>		<u>Jobber</u>	
		<u>West</u>	<u>East</u>	<u>West</u>	<u>East</u>
<u>Passenger</u>					
1	30x3½)				
2 to 7	4.40-20 to 6.00-16)	\$0.90	\$1.05	\$0.68	\$0.79
<u>Truck</u>					
8. A	30x5 4 ply	1.05	1.25	.80	.95
8. B	30x5 6 ply	1.40	1.60	1.05	1.20
9. A	32x6)				
	6.00-20 } 4 ply	1.15	1.35	.85	1.00
	6.50-20)				
9. B	32x6)				
	6.00-20 } 6 ply	1.65	1.85	1.24	1.39
	6.50-20)				
10.	34x7)				
	7.00-20 } 6 ply	1.90	2.15	1.40	1.60
	7.50-20)				

Jobbers' discount - 25% (approx.) from Dealers' List.

Quantity prices to Dealers :

1/4 gross lots, assorted sizes - one shipment 10%
1/2 " " " " " " " 15%.

Terms of payment : 2% 10th month following date of shipment, net cash end of month following.

Dealer Volume Bonus applies. Volume Bonus does not apply to purchases at jobbers' prices.

'It was further agreed that the Tire Company Reliners shall be known as "De Luxe". At the same time, National Rubber will have sub-standard Reliners to offer to some wreckers, which will be known as "Standard" Reliners, these to be offered at lower than "De Luxe" prices. Only "De Luxe" Reliners will be handled by the Tire Companies.

'In establishing the new price list it was also agreed that certain commitments already made by the National Rubber Company to large catalogue houses would be continued for the life of the 1940 Spring Catalogue. The names of these accounts were tabled by the National Rubber Company, and are as follows:

T. Eaton Company, Limited,
Empire Auto Supply,

Auto Supply Company,
Continental Auto Supply,
MacKenzie Auto Equipment,

Winnipeg, Man.
Winnipeg, Man. &
Regina, Sask.
Winnipeg, Man.
Brandon, Man.
Regina, Sask.

'National Rubber will fall in line with the agreed programme as soon as the above company catalogues expire.

'Eaton's catalogue expires about August, 1940, and the rest are for the calendar year.

'In the adoption of the above programme it was felt that the bulk of the problems involved in the sale of Reliners would be eliminated. Previously Goodrich were much lower than the other Rubber Companies, but agreed to what we all considered was a mutually satisfactory basis.'

We understand that, at present, neither Dominion or Goodyear are interested in the sale of Reliners, but, as you have pointed out, they should be kept informed of whatever arrangements are made by the other Rubber Companies in event of their becoming interested in this line."

(Exhibit 2334)

Certain price increases in the tire accessories and repair materials lines were agreed upon at an accessory meeting held in July 1940. This meeting was preceded by a letter to A. B. Hannay of the Association from I. G. Needles of Goodrich dated July 15, 1940 in which Mr. Needles, noting that "our import competition is made more difficult by the discount on Canadian money and the Special War Import Tax, thus protecting us on higher levels", proposed increases in both the accessories and the repair materials lines:

"Will you please direct the following letter to Sales Managers on Accessory and Mechanical Lines:

'After the meeting of Tire Sales Managers the other day, and discussion of Accessory prices, it seemed to me that we should call a meeting of all those interested in the various Accessory lines, including Mechanical Department Sales Managers, or their representatives on such lines as Fan Belts and Radiator Hose.

'It seems unwise to me to call a meeting to represent only portions of the general line of Automotive Accessories.

'At such a meeting, which could be held on the same day as that at which Tire Sales Managers meet, we think the following subjects should be discussed, and we have made recommendations in line with our investigation of what should be done.

1. Increase Accessory prices 10%, excepting Car Heater and Radiator Hose, and Fan Belts, which are dealt with below.
2. Endeavour to arrange an increase of 10% on Car Heater and Radiator Hose and Fan Belt prices, if the group feel such an increase is justified, and make the necessary arrangements so that car manufacturers, when they bring out their new Parts Catalogues, will be in harmony with whatever we decide to do.
3. Increase the price of Tube Repair Gum by 10%, and Camelback by 2¢ per lb., but leave other Repair Materials at their present price levels.
4. Costs have already increased, and will increase further from the effect of the new 10% War Import Tax, and we believe that a 10% increase on Fall prices is reasonable.

'Our import competition is made more difficult by the discount on Canadian money and the special War Import Tax, thus protecting us on higher levels.

'Repair Materials in our lineup seem to be at a satisfactory profit margin, and we feel that local competition is more keen on this line. Also, as this line is not sold through Jobbers, our actual recovery is nearer the Dealer Price established.

. . .

P.S.

Mr. Hannay - When you are able to arrange a meeting, if it works out that way, I think it would be convenient, as suggested, to try to get the whole group together on the same day that Tire Sales Managers meet, and perhaps hold the meeting in the afternoon. This would automatically enable those Tire Sales Managers who wanted to do so, to remain for the meeting.

I think it is useless to have a meeting without having all those interested in the complete Accessory line present, and as some companies handle Fan Belts and Radiator Hose through their Mechanical Departments, we have to have those men present also.

I expect to be away during the week of July 15th, but will be back on July 22nd to attend a meeting whenever it is scheduled. I might suggest either July 26th or August 2nd, because we were planning to have a Sales Managers' Meeting about the first of August anyway."

(Exhibit 2340)

Mr. Hannay relayed the contents of Mr. Needles' letter to the other interested companies and received the following answer by way of circular letter from S. G. Nicholls of Goodyear, dated July 22, 1940:

"We note letter from Mr. Hannay's office dated July 22nd.

While representatives from our Mechanical Department are always available to discuss Mechanical Goods for garages, the letter from Mr. Hannay's office is the first intimation our Department have had that Fan Belts, Radiator and Car Heater Hose might be given attention.

In fact our thought had been that as Fan Belt Catalogues covering these items and including Mats and Curb Lined Hose and Generator Connections, have only been out a comparatively short time, that no price change was contemplated.

On June 10th Mr. Hannay issued a letter giving a decision by the General Sales Managers that decision had been made as follows:

'The decision of the sales managers was that there should be no change such as that proposed, but that the period for booking car heater hose should continue to be from July 1st to September 30th, the deliveries to be made between Aug. 15th and October 31st; 2% cash to November 10th; net November 30th. Further, this program applies to the jobber trade only, and only to car heater hose'.

While the new Government taxes may affect costs on importations of the items mentioned and indicate that with (sic) a 10% increase might be warranted from a resale viewpoint, I question whether our costs have been affected to that extent, and it might be unwise to consider at this time any increase which could not be justified.

A meeting on Wednesday does not give us much time to review the different phases so necessary when considering an increase in price on the lines mentioned.

If Fan Belts and Radiator Hose, etc. are to be discussed we would prefer a meeting at a later date."

(Exhibit 2339A)

The following are extracts from the minutes of the accessory meeting held on July 24, 1940. The prices agreed upon at this meeting show many changes, mostly upward, from the prices settled at the meeting of February 3, 1939. Also, the courtesy discount on sales among companies was extended to certain tire accessories and repair materials:

"M I N U T E S

ACCESSORY MEETING

Toronto, July 24th, 1940.

A meeting of Accessory representatives of Canadian tire companies was held at 10 a.m. Wednesday, July 24th, 1940.

There were present: Messrs. J. J. Macaulay, Dominion; T. M. Ponton, Dunlop; R.M.B. Miller, Goodrich; P.G. Davies, Seiberling; J. Tanison, Firestone; G.D. Morison, Goodyear; A. Head, G. K. Macpherson, Gutta Percha.

Mr. Head was appointed chairman.

The following revised prices will become effective August 1st, 1940. Mail West and Maritime prices July 29th and Ontario and Eastern prices July 31st.

Courtesy Discount: Agreed that on sales by a tire company or its branches and distributors to another tire company and its branches and distributors of all tire accessories except friction tape, there will be accorded the lowest price to jobber less 5%.

On similar sales of tire repair materials made in Canada, including camelback, the courtesy discount rate will be dealer list, less 5%.

On imported curing bags, curing tubes there will be a courtesy discount of 5% off the Canadian dealer price.

Accessories - Car Manufacturers: Recommended that tire companies serving car manufacturers with Fan Belts, Radiator Hose, etc., meet with other tire companies early in October, 1940, to consider whether or not price increases are warranted, so that if such price increases are necessary they can be incorporated in car manufacturers' Parts Catalogue for 1941.

Accessory Jobber: It is not necessary for any tire company to clear any proposed names for the Accessory Jobber List through the Association office as there is no agreed Tire Accessory Jobber List, but any additions should be left to the jurisdiction of each company head office.

Bonus to Dealers: Regarding the discontinuance of bonus on tire accessories to tire dealers, the vote of the meeting recommended no change in the present policy.

Prices: The following prices and discounts were confirmed:

. . ."

(Exhibit 2284)

The minutes then set out prices for the same general range of items contained in, and in the same manner as, the minutes, previously quoted, of the meeting of January 6, 1937.

The evidence available to the Commission does not indicate whether accessory prices were reviewed in the fall of 1940.

With respect to the courtesy discount, I. G. Needles of Goodrich wrote to A. B. Hannay of the Association on December 20, 1940:

"Dear Mr. Hannay:

Accessory Prices to Branches
and Authorized Distributors
of Competitive Companies

Some time ago a program was established by which we agreed to give branches and distributors of other tire companies, with certain exceptions, the lowest Jobber Prices on Accessories, less a further 5% Courtesy Discount.

At my suggestion this was later eliminated because of unfair practice that could develop. However, I just noticed some developments which caused me to look back for authorization, and I found that this program was reinstated in the Minutes of the Accessory Meeting of July 24th, 1940.

I objected to this program, and now object to it, on the basis that any of our competitors can approach our official tire distributors and sell them Accessories at a price 5% below the price at which we can sell them. That is, such accounts as Marshall-Wells in the West, or Rene Talbot, in Quebec, could be legitimately sold the regular line of Accessories by another tire company at 5% discount from Jobber Prices.

We cannot, and do not, sell these accounts at lower than Jobber Prices, and therefore I think this type of program is entirely unfair and should be eliminated.

We certainly have no objection to extending the Courtesy Discount to tire companies and their branches, or if authorized by the tire company, to their official distributors, but we do not want to open our distributor connections to invasion by competition on a program on which we are not competitive."

(Exhibit 2342)

As a result, the courtesy discount understanding was amended at the sales managers' meeting held on May 15, 1941 (Exhibit 2128). On May 16, 1941 the sales managers' decision on the subject was relayed to the Companies from the office of the Association:

"I call your attention to a resolution adopted by a meeting of tire company General Sales Managers yesterday, as follows:

'Courtesy Discount: Agreed to amend the minutes of July 24th, 1940, by dropping the word "distributors". The minute will now read: "Agreed that on sales by a tire company or its branches to another tire company and its branches of all tire accessories except friction taps, there will be accorded the lowest price to jobber less 5%. On similar sales of tire repair materials made in Canada, including camel-back, the courtesy discount rate will be dealer list, less 5%. On imported curing bags, curing tubes there will be a courtesy discount of 5% off the Canadian dealer price".'

This is for your information and guidance."

(Exhibit 2282)

On April 10, 1941 G. K. Macpherson of Gutta Percha wrote to the secretary of the Association suggesting an increase in the price of cushion gum for patch manufacturers:

"We suggest that consideration be given to a revision in the price of Cushion Gum for Patch Manufacturers as given on page 2 of the Minutes of the Accessory Meeting of July 24th.

The agreed price for this item is 80¢ per lb. for 1/64", and 78¢ per lb. for 1/32". Deliveries in not less than 100 lb. lots of not less than 25 lb. rolls, and not subject to bonus. It is our suggestion that the price of the 1/64 Gum be increased to 90¢ per lb., and the 1/32", to 80¢. The reason for our suggesting that only 2¢ be added to the 1/32" is that the small difference in price currently effective does not nearly represent the difference in actual cost of production.

With respect to 1/64" Gum, we believe that an increase in list price is very necessary in view of the greatly increased cost of the linen on which it is run, which item adds considerable to our cost of production.

Will you please pass this suggestion on to the other Companies for consideration."

(Exhibit 2331B)

The increase was authorized at a sales managers' meeting held on May 15, 1941 which also agreed on an advance of 5¢ a gallon for rubber cement. The following is the excerpt from that meeting dealing with the above subjects:

"Cushion Gum for Patch Manufacturers: Prices for patch manufacturers, effective to-day, were set at 90¢ per lb. for 1/64" thickness and 80¢ per lb. for 1/32" thickness, for deliveries in 25 lb. rolls and in lots of not less than 100 lbs."

"Rubber Cement: It was agreed that, as of this date, shoe-repair and tire accessory rubber cements be advanced in price 5¢ a gallon to take care of the Federal gasoline tax, the increase in rubber prices and general production expense."

(Exhibit 2128)

The minutes of a sales managers' meeting of August 19, 1941 contain an item which suggests that, subsequent to the meeting of July 24, 1940 the Companies had agreed upon a higher price for camelback, since the current price mentioned is higher than that referred to in the minutes of such meeting.

" . . .

Camelback: The manager is to call a meeting of companies interested in Camelback, to consider increasing price from 33¢ to 35¢ East and 35¢ to 37¢ West. Mr. Hamay to endeavour to arrange for Viceroy Rubber to be represented.

. . ."

(Exhibit 2123)

C. Period After December 1941

Chapter 3 of Part I of this Report and Section C of Chapter 1 of this Part have referred to the wartime control measures relating to the production and sale of rubber goods including accessories and repair materials. The suspension of controls over the production and sale of accessory and repair materials was a gradual process that started in 1944 and lasted until April 1947 at which time control over the crude rubber content in the manufacture of accessories and repair materials as well as price control over the remaining accessories and repair materials items, which had not already been freed from price control, were suspended.

The meetings of the Accessory Division held between the beginning of 1942 and the end of 1945 have been devoted in large measure to matters and problems arising out of wartime shortages and to discussions revolving around various control directives to the industry, relating to such matters as the use and proportions of crude and synthetic rubbers and the specifications of the articles to be produced. The situation did not, of course, revert to normal merely by reason of decontrol. Certain shortages and other abnormal conditions continued for a considerable time thereafter. As in other branches of the rubber industry, applications to the Wartime Prices and Trade Board for price increases were dealt with at these meetings. The evidence indicates that the control authorities encouraged joint or industry applications rather than individual applications when increased prices had to be sought.

The following minutes of an accessory meeting of November 27, 1944 have been selected from among the five sets of minutes obtained by the Commission covering meetings between November 25, 1942 and November 2, 1945 as being representative of this period. It will be remembered that during the period of controls all prices were subject to fixed ceilings, and ceiling prices could not be raised or prices for new products set without the authority of the Wartime Prices and Trade Board, and any discussions about prices during such period should be read in the light of these considerations.

"A meeting of tire accessories and repair materials representatives of tire companies was held in Toronto on Monday, November 27, 1944, at 10 a.m.

There were present: Messrs. J. M. Delorme, Dominion; T. M. Ponton, Dunlop; H. E. Jeeves, Goodyear; G. K. Macpherson, Gutta Percha.

Rayon Cord Repair Fabric: In view of the recommendation from Rubber Control that this be made, it was agreed to recommend to general managers that this material be produced in 5 and 10 lb. rolls. It was ascertained that Dominion showed a price of \$1.75 per lb. for this material in 5 lb. rolls in their Accessory Repair Materials Price List dated August 1, 1940, and it was agreed to

recommend the adoption of this price with the usual 5¢ per lb. reduction, i.e. a price of \$1.70 per lb. for 10 lb. rolls.

Rayon Ready-Built Type Patch: It was agreed that discussion of the manufacture and pricing of these patches be deferred to a future meeting, in about one month's time, when companies are expected to have decided what type of patches they intend to make, and to have cost figures on which to base price recommendations.

Repair Kits: It was noted that the Rubber Control has authorized the manufacture of these kits containing not more than 20 square inches of combination tube repair gum, nor more than 1.5 cubic inches of rubber cement as specified in R. C. 151.

It was felt that the maximum permitted quantity of gum was rather low, and on investigation it was ascertained that the small kits previously made contained 24 square inches of cured-back stock, and a 3/4" x 3" tube of cement. As recorded in the Accessory Meeting minutes of July 24, 1940, the price of this kit was \$1.85 per dozen.

After some discussion, it was agreed to recommend to general managers, that Rubber Control be requested to amend R.C. 151 to permit 24 square inches of gum in repair kits, which would allow companies to put out a kit without having to obtain approval of a new price.

Adjourned."

(Exhibit 2279)

By way of a similar illustration, the following are the items relating to accessory and tire repair materials that are contained in the minutes of a sales managers tire meeting of March 9, 1944:

". . .

Camelback and Repair Gum Prices: Consideration was given to the averaged production costs of truck camelback, tread repair gum and tube repair gum which were sent to the companies under date of March 6th. It was agreed that further investigations would be made before recommendations as to prices are submitted to the general managers.

Retreading and Repair Materials: It was agreed that the present production quota of 200% of basic period is inadequate, as shown by a large and growing volume of back orders, which the companies are unable to fill. It was further agreed that in view of the increasing need for retreading and repairs to keep worn tires in service, the quota should be increased to 300% as a rubber conservation measure.

Repair Kits: After discussion it was agreed that it is not now desirable to recommence manufacture of repair kits.

". . ."

(Exhibit 2247)

In 1945 Barringham, which had been manufacturing and selling rubber repair materials since its incorporation in 1939, and had belonged to the Association since 1942, was invited to attend the meetings of the Accessory Group. At a sales managers' tire meeting, held on December 3, 1945, G. R. Bellinger, Barringham's Sales Manager, reported on price cutting activities in the Montreal and Toronto areas relating to sales of camelback. The matter is reported in the minutes of the meeting held on that date:

" . . .

In connection with camelback stocks, Mr. Bellinger stated he has had reports of price-cutting in Montreal and Toronto to as low as 28 to 30 cents per lb. The meeting was of the opinion that such reports probably originated with retreaders trying to play one source of supply off against another and suggested that Mr. Bellinger try to obtain some definite proof that sales are being made at these prices.

The meeting confirmed that sales of camelback are not subject either to the 2% cash discount or to bonus for volume.

. . ."

(Exhibit 2235)

On December 10, 1945 H. E. Jeeves, Manager of Goodyear's Accessory Department, brought the matter up again in the following letter, addressed to the secretary of the Association, as well as to the accessory representatives of the other Companies:

"It has been reported to us, that one of the Rubber Companies has disposed of approximately 100,000 lbs. of Grade C Camelback at 20¢ per pound, in the Montreal area.

We see no reason for this dumping as there still is a demand for this grade of Camelback and there likely will be always a demand for a cheaper Camelback. Such action as that outlined above will make it most difficult for the other companies to get a fair price for their product."

(Exhibit 2308)

On December 13, 1945 G. R. Bellinger of Barringham brought the matter up again in a letter addressed to the secretary of the Association:

"For your information, the writer was in Montreal the week of December 3rd to the 7th, 1945, at which time I had an opportunity of contacting several re-treaders' plants.

I would like to report to you, that during my contacting, I found that in one place alone, a stock of 50,000 lbs. of Dominion Rubber Company Camelback, Grade C, had been sold to this account at 20¢ per lb. This account stated, that they had at that time,

approximately 7 to 8 tons of regular Camelback in stock and that the Dominion Rubber Company sent them a credit note, between the 34¢ - 37¢ per lb. price, to match up with the 20¢ per lb. merchandise they had purchased the last week of November.

At the last Sales Managers' Meeting, you will recall that I brought this to the attention of the members, stating that it had been reported to me in Toronto, that Camelback had been offered at 30¢ a lb. in Toronto and 28¢ a lb. in Montreal, with no answer as to the correct statement from any of the tire companies, who manufacture Camelback. However, I went to Montreal and examined this merchandise myself and was offered, by several companies, any quantity, in any size, wing stock included, at a price of 25¢ to Barringham Rubber Company, stating that they were making 5¢ a lb. profit.

We see no reason for this dumping and agree, with Mr. H. E. Jeeves, that there still is a demand for this grade of Camelback and it has made it most difficult for our Company, as well as other companies, to get a fair price for our product, agreed upon with the Association.

I thought I would bring this to your attention and should there be a meeting called, you will have in writing my experience, which I will back up 100% as being correct."

(Exhibit 2856)

On the same date a letter on the same subject was sent G. B. Smith of the Association by G. K. Macpherson, Assistant Manager of Gutta Percha's Tire Department:

"As discussed in conversation with you yesterday afternoon, we should be glad if you would write to the Dominion Rubber Co. in Kitchener and advise them that it has come to the attention of the rubber companies that Dominion are disposing of a very large quantity of Grade C Camelback at 20¢ per lb. in the Montreal area.

We feel that they should be called upon to explain this action in view of the agreed price basis for this line.

..."

(Exhibit 2307)

In a letter to the Companies dated December 14, 1945 G. B. Smith, Manager and Secretary of the Association, refers to the letters received from Goodyear, Gutta Percha and Barringham, concluding:

"From all the above, it seems clear that the Camelback pricing situation threatens to become chaotic unless immediate steps are taken to bring it under control. I am, therefore, calling an Accessory meeting for Thursday, December 20th at 10 a.m. particularly to discuss this problem and I trust it will be possible for your company to be represented."

(Exhibit 2632)

The minutes of the accessory meeting held on December 20, 1945 which record Barringham, Dominion, Dunlop, Firestone, Goodrich, Goodyear, Gutta Percha and Seiberling as having attended, report the discussion relating to Camelback prices in the following terms:

"CAMELBACK PRICES: As the meeting had been called primarily to investigate reports that the Dominion Rubber Company had been selling large quantities of Grade 'C' Camelback at 20 cts. per lb. in the Montreal district, Mr. Lucas was requested to make a statement.

Mr. Lucas admitted frankly that Dominion had sold several thousand pounds of Camelback in Montreal at 20 cts. per lb. but said that the figure of 100,000 lbs. which had been mentioned was fantastic. A substantial quantity had been sold to one large account in particular, but on a distinct understanding that it was for this account's own use and not for resale. He denied absolutely, a report that Dominion had granted credits covering the difference between 20 cts. and 34 cts. per lb. on inventories of Camelback bought at regular prices which Montreal accounts still had on hand, and stated definitely that Dominion had not sold any Grade 'A' Camelback at cut prices.

In explanation of the price-cutting on Grade 'C' Camelback, Mr. Lucas said that it had arisen from a routine annual letter from the Comptroller's Department warning branches not to be left with large stocks of slow-moving lines on their hands. This had led the Toronto branch to offer some Grade 'C' Camelback to Toronto accounts at 30 cts. per lb. and also to offer some to Montreal accounts at 25 cts. per lb. without consulting head office. Montreal branch had heard of the offer at cut prices in the Montreal district, and resented it and immediately began offering Grade 'C' Camelback at 20 cts. per lb. also without consulting head office. Immediately Mr. Lucas heard of these developments, he gave orders that the price-cutting must stop immediately and had all stocks of Grade 'C' Camelback on hand at branches returned to the factory, some 70,000 lbs. in all.

Mr. Lucas expressed the opinion that a large account in Montreal which obtained some of the 20 ct. camelback is making deliberate use of the incident to try to break down camelback prices generally. He also stated that he knows definitely that some rubber companies are actually giving cash discount and bonus for volume on camelback, contrary to the industry agreement.

This led to a discussion of infractions of industry agreements with regard to accessories and repair materials generally in the course of which it was stated that invoices covering repair cord at 60 cts. per lb. and covering repair materials at 25% discount off dealer price had been seen. It was also pointed out that the situation with respect to discounts on repair materials sold to tire distributors was unsatisfactory, there being no standard discount and rates ranging from 15% to 25%. It was also charged that warehousing commissions are being abused, although there is a definite industry understanding that the maximum commission for warehousing services is 7½%.

..."

(Exhibit 2276)

minutes then record the following resolutions:

". . .

In order to try to correct these and other abuses the following motions were moved, seconded and passed:

- 1 - That a recommendation be made to general sales managers that for the tire season 1946-47 commencing November 1, 1946, all tire repair materials and accessories be non-bonusable.

Barringham and Firestone abstained from voting on the above motion. The other companies were unanimously in favour,

- 2 - That it be recommended to general sales managers that tire distributors be limited to a maximum discount of 15% on retreading and tire repair materials (those items on which there is not a jobbers' discount) and that all companies selling these materials through tire distributors submit a list of the distributors and their branches entitled to this discount to the secretary for compilation into a consolidated list for distribution to all interested companies.

Carried unanimously.

The secretary was also requested to record in the minutes that several companies have on hand very substantial amounts of Grade 'C' Camelback. These companies undertook to do their best to dispose of these stocks at the regular price, while the other companies agreed to try to assist them by taking some off their hands. If it is not possible to liquidate the stocks before deterioration starts, another accessory meeting will be called to discuss means of disposal.

". . ."

(Exhibit 2276)

The minutes end with the following paragraph:

"FUTURE MEETINGS: It was agreed that in order to try to keep competition in the accessory and tire repair material division of the industry on a sound basis, meetings will be held regularly at two month intervals in future, and that any reported infractions of industry agreements will be tabled at these meetings with full details and supporting evidence. The next meeting will be held on Monday, February 18th, 1946 at 10 a.m."

(Exhibit 2276)

H. E. Jeeves of Goodyear in his evidence before the Commission stated in respect of the camelback incident:

"Q. What was the incident about?

- A. Well, apparently one of the rubber companies dumped an awful lot of camelback on the market which actually upset the market. We were most interested in that. We are big camelback suppliers ourselves, and in finding out the price and also in an effort to see what we could do to meet this thing ourselves or where we stood on the matter."

(Evidence, p. 7186)

G. K. Macpherson of Gutta Percha put a somewhat different complexion on the incident:

- "Q. Do you recall attending that meeting, Mr. MacPherson?

- A. Well, not exactly, not all the details, but I remember this repair kit thing. That brings it back a bit here. I recall the discussion with Jack Lucas (of Dominion) about camelback being sold at that price and we said to him that it was very destructive so far as the use of the material is concerned. In other words, you might have a dealer buying the material, he thinks he is getting something at a bargain, and it is really destructive to the public at large. We were all very much against that. We said it is a far better plan to take your beating. We can't help those things. That is a wartime hangover, just accept it."

(Evidence pp.6662-63)

The resolutions of the accessory meeting of December 20, 1945 were endorsed by the sales managers of the Tire Companies at a meeting held on January 14, 1946:

". . .

ACCESSORIES AND REPAIR MATERIALS: With Dunlop dissenting, the meeting approved a recommendation by Accessory Managers at their meeting of December 20, 1945, that for the tire season commencing November 1, 1946, all tire repair materials and accessories be non-bonusable. This approval was contingent upon the removal of price control by the date specified.

The meeting also considered the Accessory Managers' recommendation that the maximum discount to tire distributors on retreading and tire repair materials (on which there is not a jobbers' discount) be limited to 15% and that all companies submit to the Association a list of tire distributors to whom they grant a discount for compilation into a consolidated list.

All companies agreed to a maximum discount of 15%, and Firestone undertook to reduce their discount at least to this maximum as soon as possible, but not later than the beginning of the next tire season. The preparation of a consolidated list of distributors entitled to discount was also approved, the draft list to be examined by Accessory Managers at their next meeting.

". . ."

(Exhibit 2234)

The consolidated list of distributors entitled to the discount was compiled from information received from the Companies. On January 25, 1946 A. U. Oakie, Assistant to the Secretary and Manager of the Association, wrote the following letter to the Companies:

"RE: List of Tire Distributors

On December 27th, 1945, we wrote to all companies who were selling retreading and tire repair materials through tire distributors asking them to submit a list of these distributors with their branches to this office for compilation into a consolidated list to be distributed to all interested companies. We have now received replies from all companies concerned and are attaching hereto a consolidated list of these distributors.

Would you kindly check this list with a view to having it reviewed at the next meeting."

(Exhibit 2313A)

On January 31, 1946 R. M. B. Millar, Manager of Goodrich's Automotive Supplies Division, sent the Association the following letter, to which was attached a revised list of tire distributors:

"Subject: LIST OF TIRE REPAIR MATERIALS.DISTRIBUTORS

The following is written in connection with your letter of January 25th, 1946.

We believe there must have been some slight misunderstanding in connection with the preparation of the subject list of accounts so far as certain manufacturers are concerned.

According to the list attached to your letter of January 25th, only 70 accounts are reported. However, in a number of cases, manufacturers neglected to list all of the branches of certain distributors. For example, United Auto Parts is shown as Montreal and Val D'Or, whereas actually they have over 30 branches, with the result that if you add in all of the branches as well as head offices of approved tire distributors who were in a position to sell repair materials, there are at least 125 accounts in a position to sell repair materials rather than 70.

Attached is a revised list which we have prepared which is accurate so far as we know and includes all head offices and branches of the various accounts.

We are sending copies of this list to all interested manufacturers and, unless we hear anything to the contrary, we will assume that all manufacturers are in agreement that the list attached to this letter is correct and should supersede that attached to your letter of January 25th."

(Exhibit 2312A)

The list of tire distributors came up for discussion at an accessory meeting held on February 19, 1946 attended by Barringham, Dominion, Dunlop, Firestone, Goodrich, Goodyear, Gutta Percha and Seiberling. The following is an excerpt from the minutes of that meeting dealing with the subject:

"LIST OF TIRE DISTRIBUTORS TO WHOM RETREADING & REPAIR MATERIALS ARE BEING SOLD AT A DISCOUNT: A new list as drawn up by Mr. Millar was reviewed and it was pointed out that there were several names on the list who are not legitimate tire distributors and yet are enjoying the tire distributors' discount. It was the general consensus of opinion that an effort should be made by all companies to eliminate those accounts who are not properly qualified for the discount. It was agreed that the attached list (Appendix I) be established as an industry list and the Rubber Association to be advised of any future additions or deletions to same. It might be pointed out that at the last meeting of the Sales Managers, they concurred with the Accessory Managers' recommendation that the maximum discount to be allowed to the accounts on this list be 15%."

(Exhibit 2275A)

Other matters brought up at the meeting included the following:

"BONUS FOR VOLUME ON CERTAIN ACCESSORIES AND REPAIR MATERIALS: It was pointed out that since there are only a few items subject to bonus, that it would not jeopardize the industry's standing if this bonus were to be discontinued, if and when W.P.T.B. permitted. Since Dunlop is the only company not in favour of such a move, it was suggested that Dunlop review the situation again and that it be discussed at a future meeting."

"QUANTITY DISCOUNTS ON ACCESSORY & REPAIR MATERIALS: The problem of quantity discounts on such things as universal flaps, Floor mats, repair kits, etc. was discussed and it was recommended that quantity discounts for both Jobbers and Dealers be eliminated on all Accessory and Repair Materials, if and when W.P.T.B. permits."

"DISPOSAL OF SECOND GRADE REPAIR MATERIALS: There was some discussion as to the possibility of scrapping second grade material rather than selling it as such, but several companies were not in favour of this. It was, therefore, recommended that if, due to production problems etc. any company has a second grade of standard repair materials, that it be disposed of through ordinary channels at 33 1/3 % discount below normal buying prices."

"QUALIFICATIONS FOR ACCESSORY JOBBERS' PRICES: There was some discussion on accounts who are receiving jobbers' prices and who are either not entitled to it or are abusing the privilege. Mr. Millar read out a policy which Goodrich adhere to in ascertaining whether a firm is entitled to a jobbers' discount. It was recommended that it would be desirable to have a standard policy in the industry

and Mr. Millar agreed to send a copy of Goodrich's form and policy to all companies. All companies agreed to review and will be prepared to discuss it at the next meeting. It was also agreed to review at the next meeting the policy of discounts to large tire dealers who are not jobbers, but handle fleet accounts."

"BASIS OF CALCULATING EXPRESS CHARGES ON SHIPMENTS: One company inquired as to the common industry practice on the handling of express charges on shipments less than 100 pounds. It was declared that:

"Express shipments of 100 pounds or over, are express collect, with freight equalized to the nearest company prepaid or equalization point. Express shipments less than 100 pounds - express collect."

"PRICE BASIS FOR CUSHION GUM & CEMENT TO PATCH & REPAIR KIT MANUFACTURERS: Reference was made to the prices as set up on Accessory articles in the Accessory minutes of July 24, 1940, and as amended in May, 1941. It was affirmed that prices for cushion gum to patch manufacturers is 90¢ per lb. for 1/64" and 80¢ per lb. for 1/32" for deliveries in 25 lb. rolls and in lots of not less than 100 lbs. It was again agreed that any patch manufacturer who buys repair material at dealer prices get the bonus earned on bonusable items only."

(Exhibit 2275A)

Minutes of a meeting of tire sales managers, held on March 25, 1946 contained the following relating to the recommendations made at the accessory meeting of February 19:

". . .

RECOMMENDATIONS AT ACCESSORY MEETING OF FEBRUARY 19TH, 1946:

- (1) Recommendation that Quantity Discounts on Accessories and Repair Materials be Discontinued When Price Controls Lifted. (Italics supplied)

The meeting concurred in the recommendation.

- (2) Recommendation that Second-Grade Repair Materials be Disposed of at a Discount of 33 1/3 Per Cent.

The meeting disapproved of this recommendation feeling that it would be very open to abuse. As an alternative solution to the problem they recommended that any company having a problem in connection with the disposal of second-grade materials discuss the matter with other companies at an Accessory meeting before taking action.

". . ."

(Exhibit 2231)

The conclusions of the sales managers are recorded as having been approved at a meeting of general managers of the Tire Companies held on March 28, 1946 (Exhibit 2230).

At the following accessory meeting, held on April 8, 1946 qualifications for jobbers' prices were discussed:

". . .

QUALIFICATIONS FOR ACCESSORY JOBBERS PRICES: As requested at the last meeting, Mr. Millar had sent to all companies a copy of Goodrich's form and policy regarding qualifications which a jobber must fulfill before being entitled to buy at jobbers prices. It was recommended that the following formula for qualifying an account for classification as a Jobber can be considered for the next meeting:

'Approved jobbers may be extended Jobber Net Prices as shown in the "Auto Parts and Accessory Jobber Price List". Any person, firm, corporation or other form of enterprise may be considered for Jobbers' Prices who sell 75% or more of their purchasers to retail dealers or industrial accounts, and who perform the following functions as a part of their regular business:

- (a) Maintain stock of such products.
- (b) Furnish storage and shipping facilities.
- (c) Maintain one or more salesmen to sell products of the division to the retail and industrial trade.
- (d) Extend credit accommodation to customers and make collections.
- (e) Handle merchandise in standard packages.
- (f) Are recognized as regular jobbers by six or more manufacturers or manufacturers' agents. Or, in the case of a new account, they will be considered for Jobbers' Prices by six or more suppliers.'

". . ."

(Exhibit 2274)

The meeting again dealt with the bonus for volume matter:

". . .

BONUS FOR VOLUME: Mr. T. M. Ponton of Dunlop advised that his management is still considering the recommendation agreed upon by all other rubber companies to discontinue bonus for volume on all accessories, repair and treading materials. Mr. Ponton is to advise further.

ITEMS ON WHICH BONUS FOR VOLUME APPLIES: There was some discussion regarding items which are entitled to service consideration and the apparent lack of an accurate and complete list of these items in

the Association Minutes. Therefore, it was decided to draw up a list of items which are entitled to bonus for volume as earned and it is to be reviewed by all companies for consideration at the next meeting. This list is as follows:

- Airbag Paint
- Air and Steam Bags
- Air and Steam Bag Accessories
- Cement - Cold Cure
 - " - Quick Cure
 - " - Vulcanizing
- Cord Fabric
- Cushion Gum
- Flaps - All types (including drop centre rim strips or tube protector strips)
- Patches, Tire - (When made from new or new scrap material only)
 - " Tube - (bevel cut)
- Rubber Repair Gum - Cure Back (cold patching material)
 - " " " - Quick Cure
- Rubber Repair Kits - all types
- Rubber Solvent
- Soapstone and Mica
- Tire Dye
- Tire Paint - Black and White
- Tire Repair Plugs
- Top Dressing
- Valve Repair Pads
- Windshield Wiper Tubing

. . ."

(Exhibit 2274)

The minutes also contain the following item:

" . . .

QUANTITY PURCHASE DISCOUNT: At the Accessory Meeting of February 19th, 1946, a recommendation was made to Sales Managers that the Quantity Purchase Discount extended to dealers and jobbers be withdrawn at the first opportunity. This was approved by Sales Managers in their meeting of March 25th and confirmed by the General Managers' meeting of March 28th. The products that will be affected are as follows:

- Flannel Flaps (individual)
- Car Floor Mats
- Patches, All Types - Tire and Tube)
- Rubber Repair Kits - All Types
- Vulcanizing Cement - Nine 5-gal. cans one shipment

. . ."

(Exhibit 2274)

The accessory and repair material items on which bonus for volume applied were reviewed and settled at an accessory meeting held on June 10, 1946. The meeting also reviewed the qualifications necessary to receive accessory jobbers' prices and made some slight changes in the last qualification (Exhibit 2272). A meeting of sales managers of the Tire Companies held subsequently on June 25, 1946 gave its approval:

" . . .

2 - Re List of Accessories on Which Bonus for Volume Applies:

The meeting approved the list given in the Accessory Minutes of June 10th, with the addition of tread gum as a full and correct list of accessory items on which bonus should be payable. It was recognized however, that it would probably not be possible to change existing practices in connection with bonus on accessories until Price Control is lifted. (Italics supplies)

3 - Re Accessory Jobbers Qualifications: The meeting approved the qualifications for recognition as an Accessory Jobber set forth in the Accessory Minutes of June 10th.

. . ."

(Exhibit 2225)

In September 1946 the Rubber Administrator rejected the application of the industry for permission to cancel the Quantity Purchase Discount on the ground that such cancellation would be tantamount to a price increase (Exhibit 2271).

On July 3, 1946 G. K. Macpherson of Gutta Percha wrote the following memorandum to the divisional and branch managers of the company:

"SUBJECT: Qualification for Accessory Jobber Prices.

Gentlemen:

At a meeting of the Accessory Department representatives, of the different companies, a list of the qualifications which a jobber must fulfil before being entitled to buy at jobbers' prices was drawn up and it was agreed that the following would be adopted by all companies:

Approved jobbers may be extended Jobber Net Prices as shown in the 'Auto Parts and Accessory Jobber Price List'. Any person, firm, corporation or other form of enterprise may be considered for Jobbers' Prices who sell 75% or more of their purchases to retail dealers or industrial accounts, and who perform the following functions as a part of their regular business:

- (a) Maintain stock of such products.
- (b) Furnish storage and shipping facilities.

- (c) Maintain one or more salesmen to sell products of the division to the retail and industrial trade.
- (d) Extend credit accommodation to customers and make collections.
- (e) Handle merchandise in standard packages.
- (f) Are recognized as regular jobbers by a sufficient number of manufacturers or manufacturers agents.

We believe that you will agree that this is a sound policy and if maintained will be of mutual benefit to all companies including ourselves.

It is on this basis that the application forms which are being submitted will be considered in addition to other considerations such as number of jobbers being serviced in various territories, etc."

(Exhibit 2504)

As already reported, certain of the accessory minutes were reviewed in the summer of 1947 by A. U. Oakie, Assistant to the Secretary and Manager of the Association. Dealing with this review, Mr. Oakie said in his evidence:

"A. At the time these changes were made Mr. Smith asked me to go through the Accessory Minutes and make any changes which he thought or which I thought would leave the wrong impression with the Combines Investigation Committee. I am afraid at the time I went into a bit of a flat spin and took out a lot of things here that weren't necessary, things that may have appeared bad. . . .

. . .

Q. . . . You got instructions from Mr. Smith to delete anything that might mislead the Commission?

A. That is right.

Q. Mislead the Commission in what way?

A. Give them the impression that there is a binding and concrete agreement, actually there is no binding and concrete agreement in any of these Minutes. There are no penalties or anything of that nature.

. . .

Q. How far back did you review the Minutes:

A. I honestly can't say, Mr. MacKeigan.

. . . .

Q. Did you go back to the beginning of your time as Secretary?

A. I believe I must have started from the time I started. I went through all the Minutes I had taken and reviewed them, whether I made any changes in them or not, I can't say.

. . .

Q. Could you describe in general terms more specifically the type of item which you did take out? Or, can you recall enough of what you did at that time?

A. Well, anything to do with prices or agreement that may have seemed bad on the surface, I don't know whether I took the whole items right out or changed the items. I couldn't tell you at this time.

. . .

Q. Did you make a distinction in reviewing as to the different varying dates on which controls were removed?

A. Generally speaking, I am almost sure I did, although I don't know whether I just took the date of the various lists and went along those lines. But generally speaking I just remember controls came off around 1947 or 1946, whatever the period was.

Q. And can you give me any further assistance as to the number of Minutes that were changed in this way?

A. I would certainly like to, but I honestly can't say that I recall how many Minutes were changed.

Q. Were there more than one?

A. I believe there were more than one and yet, as I said before, it could possibly be six. I don't know the number now."

(Evidence pp. 6518-6526)

The minutes of the accessory meetings held in the latter part of 1946 and in 1947 obtained from the files of the Association are practically free of direct references to price discussions. Other documentary evidence shows that these official minutes from the Association, because of original omission or subsequent alteration, do not report all that transpired at these accessory meetings. For instance, whilst the minutes of an accessory meeting held on November 21, 1946 (Exhibit 2270) do not refer to any price discussion, the following memorandum dated November 25, 1946 from H. E. Jeeves, Manager of Goodyear's Accessory Department, to C. B. Cooper, the General Sales Manager of the company, indicates that a discussion took place at that meeting on a proposed upward revision of certain accessory prices:

"At a meeting of Accessory Managers held on November 21st, it was unanimously agreed that the following price increase should be submitted to Sales Managers for their approval. We understand the Sales Managers' Meeting is being held to-morrow November 26th, and we would appreciate your endorsing these increases.

Straight Rad Hose	- Suggested Increase	20%
Curved Rad Hose	-	10%
Wind-Shield Wiper Tubeing (braided type)		10%

The above items are no longer subject to control as ceilings on them were removed by W.P.T.B. Order #642.

Larger increases than those suggested are actually needed but it was felt by those present at the meeting, that the actual selling prices we should have, should be reached by one two or three small increases at intervals rather than one big jump at the present time.

Gutta Percha have been advised by the Wartime Prices & Trade Board that controls have been lifted on Automobile Floor Mats and as Gutta Percha and ourselves, are the only manufacturers, we have decided we would like to add a 20% increase to the price of Car Mats."

(Exhibit 2460)

The minutes of a sales managers' meeting held on November 26, 1946 contain the following item:

"RECOMMENDATIONS OF ACCESSORY MANAGERS, NOVEMBER 21st, 1946:

The Sales Managers approved for, submission to General Managers, the recommendations made by Accessory Managers at their meeting of November 21st, 1946."

(Exhibit 2222)

The minutes of the subsequent general managers' tire meeting do not report the matter as having been dealt with at the meeting.

Again, an agenda of the matters to be dealt with at an accessory meeting to be held on January 31, 1947 obtained from the files of one of the Companies (Exhibit 2745A) lists among other matters to be brought up at the meeting the following: quantity purchase allowance and bonus for volume on accessories and repair materials, and car heater hose for car heater manufacturers. Minutes of the meeting obtained from the Association (Exhibit 2269A) and from Goodyear (Exhibit 2456) do not contain any reference to discussions on these matters. On February 24, 1947 however, T. M. Ponton of Dunlop wrote the following letter to G. B. Smith of the Association dealing with the bonus for volume or "Service Consideration" as it was otherwise known:

"SERVICE CONSIDERATION- AUTOMOTIVE ACCESSORIES

This subject is referred to in the Minutes of Meeting held on 31st January and in connection therewith we desire to place on record the fact that Dunlop is in agreement with the proposal to discontinue payment of Service Consideration on purchase of Auto Accessories by Dealers.

It is understood, however, that this change in sales policy will be made effective at the beginning of the 1947-48 Tire year, which is 1st November, 1947. This is essential for the reason that our Dealer Franchise Agreement for the current Tire year, which includes the Service Consideration Programme on Accessory purchases, does not expire until 31st October, 1947."

(Exhibit 2519)

It would therefore appear that the minutes of the meeting of January 31, 1947 were among those revised by A. U. Oakie.

On February 20, 1947 G. K. Macpherson of Gutta Percha wrote the following memorandum to M. C. Moyer, Manager of this company's Tire Division. The memorandum deals with a proposed upward price revision on accessories and repair materials:

"SUBJECT: Proposed Price Changes -- Accessories and Repair Materials.

Attached is a list of the proposed price changes on Accessories and Repair Materials. It will be noted that these are broken into two groups.

Group A -- Our own manufacture
Group B -- Not our manufacture

As minutes will not be issued by the Rubber Association, these price changes under group A are being submitted for your consideration in this way. Items under group B will be considered by the management of the manufacturing companies, and, if approved, will automatically become our price level.

No date for their adoption has been set, but it is suggested that sufficient time be allowed for getting new price lists ready, which will mean about March 20th or even as late as April 1st.

We would be glad to have your decision when you have had an opportunity of considering these proposed changes, in order to communicate with the other accessory representatives on the view point of their management."

(Exhibit 2503A)

Attached to the memorandum were four pages giving the proposed price changes on the items in Group A which included tube repair kits, talc or soapstone, tire paint, auto heater hose, radiator hose and various repair materials; and on the items in Group B which comprised air bags, tire marking crayons and hose connections.

On February 24, 1947 T. M. Ponton of Dunlop wrote a circular letter to Goodyear, Dominion, Firestone, Goodrich, Gutta Percha and Seiberling:

"RADIATOR HOSE - 3 FT. LENGTHS

The attached sheet covering 3 ft. lengths of Radiator Hose outlines suggested prices to Canadian Dealers and Jobbers of Automotive Accessories.

These prices are provided for the purpose of study prior to the next meeting, at which time they can be reviewed with the intention of completing the Price Book work sheets which cover a variety of Accessory Items.

Messrs. H.E. Jeeves	-	Goodyear
J.M. Delorme	-	Dominion
W.M. Nelson	-	Firestone
R.M.B. Millar	-	Goodrich
G.K. Macpherson	-	Gutta Percha
J. Preston	-	Seiberling

(Exhibit 2520A)

Attached to the letter was the following sheet giving suggested Canadian prices on radiator hose:

"RADIATOR HOSE - 3' LENGTHS
(WORK SHEET PAGE 13)

Size	Current Canadian Prices		U.S.A. Prices Jan. 31/47		Estimated U.S.A. Laid-in Prices		Suggested Canadian Prices	
	Dealer	Jobber	Dealer	Jobber	Dealer	Jobber	Dealer	Jobber
	Ft.		Ft.		Ft.		Ft.	
1	.23	.15½	.28	.1910	.3760	.2565	.26	.17½
1-1/8"	.24	.16					.28	.18½
1-1/4"	.26	.17½	.34	.2270	.4566	.3049	.30	.20
1-3/8"	.29	.19½	.36	.2510	.4834	.3371	.33	.22
1-7/16"	.30	.20					.35	.23½
1-1/2"	.31	.20½	.38	.2670	.5103	.3586	.36	.24
1-5/8"	.32	.21½	.42	.2860	.5640	.3841	.37	.24½
1-3/4"	.34	.22½	.44	.3040	.5909	.4083	.39	.26
1-7/8"	.36	.24					.41	.27½
2"	.38	.25½	.50	.3470	.6714	.4160	.44	.29½
2-1/8"	.42	.28					.48	.32
2-1/4"	.44	.29½	.61	.4010	.8191	.538	.51	.34
2-1/2"	.46	.30½	.70	.4700	.9400	.632	.53	.35½
2-3/4"	.49	.32½					.56	.37½
3"	.55	.36½					.63	.42

Suggested Canadian Dealer prices figured on increasing the Current Canadian Dealer prices by 15% - Jobbers' discount 33-1/3%.

The Estimated U.S.A. laid-in prices figured on the basis of U.S.A. Dealers and U.S.A. Jobbers (Jan.31/47)

plus 1/2 of 1% exchange
" 22 1/2% duty
" 8% sales tax
" 1% freight

Toronto, 20th February, 1947."

Exhibit 2520B)

The current and suggested Canadian dealer prices set out in the foregoing attachment correspond to the prices for radiator hose that are set out in the attachments to Mr. Macpherson's memorandum to Mr. Moyer of February 20, 1947.

No minutes of any accessory meeting held between January 31 and April 30, 1947 were obtained from the Association or from the Companies; nor do the minutes of the meetings of the Tire Division held during that period contain any reference to the revised prices on accessories and repair materials that evidently went into effect on April 1, 1947. It would appear from the following memorandum, dated March 24, 1947 from I. G. Needles, Vice-President of Goodrich, to R. M. B. Millar of the company's Automotive Supply Division that the industry was cautious about the contents of the minutes of meetings; the memorandum also outlines the procedure for clearing accessory recommendations as reaffirmed at the sales managers' meeting of March 13, 1947 (Exhibit 2214) and later tabled at the accessory meeting of April 30, 1947 (Exhibit 2267):

"There seems to have been considerable confusion regarding the clearance of necessary approvals for the recent recommendation of price changes on the part of the Association Accessories Committee.

The reason for this is that, in the first place, it is not considered wise to issue minutes bearing changes in prices which have been discussed. In the second place, no steps were taken to draw this proposed increase in price to the attention of General Managers for their approval.

In order that there may not be the confusion and unnecessary delay which occurred in this instance and to which I was a party because I was not asked to approve such a program by anyone here or from the Association, the following points should be kept in mind:

Recommendations or agreements reached by a sub-committee of the Sales Managers group, or by groups subordinate to the Sales Managers, should not be put into effect before:

1. They have been cleared through General Sales Managers and General Managers.

2. The management of all companies affected have reported their views to the Association in writing.
3. The Association have notified companies that the recommendations or agreements are generally approved.

Will you please take steps to see that any future recommendations arising in the way of price increase or decrease or policy change is handled so that prompt clearance through the necessary authorities will be achieved, and so that there will be no confusion or delay.

This is to be our policy and procedure, notwithstanding what other companies may indicate they may do through various representatives, as it not infrequently happens that one representative makes a statement about what his company is prepared or willing to do when the general management of that company indicates they are not necessarily prepared to approve it."

(Exhibit 2797)

On March 26, 1947 W. M. Nelson of Firestone wrote G. K. Macpherson of Gutta Percha, with copies to the other interested companies, with respect to the procedure to be used in advising the company's branches of the new revised prices:

"We will be glad to follow the procedure outlined in your letter of March 20th with regard to wiring our Branch points by nightletter on March 31st covering the new price lists effective April 1st on Accessories and Repair Materials.

cc: H.E. Jeeves, Goodyear
T.M. Ponton, Dunlop
A.C. Wray, Dunlop
J.M. Delorme, Dominion
R.M.B. Millar, Goodrich
J.F. Horton, Goodrich
J.B. Preston, Seiberling"

(Exhibit 2511)

The next meeting of the Accessory Group, of which the Commission has evidence, was held on April 30, 1947. The minutes obtained from the Association (Exhibit 2267) and those obtained from Goodyear (Exhibit 2457) and Dunlop (Exhibit 2584) are identical, but differ from those obtained from Seiberling (Exhibit 2388B). The minutes received from Seiberling contain the following items which are not found in the minutes of the same meeting obtained from the Association:

"SERVICE CONSIDERATION (BONUS FOR VOLUME)"

Dunlop advised they are now in agreement with the proposal made at the meeting of February 19th, 1946 to discontinue payment of Service Consideration on purchases of auto accessories by Dealers.

It was, therefore, decided that the following list of items are the only items on which service consideration is to be allowed, (Recommended June 10th, 1946 and approved by Sales Managers on June 25th, 1946), to be put into effect November 1st, 1947:

- Airbag Paint
- Air and Steam Bags
- Air and Steam Bag Accessories
- Cement - Cold Cure
- Cement - Quick Cure
- Cement - Vulcanizing
- Cord Fabric
- Cushion Gum
- Mould Lubricant
- Rubber Repair Gum - Cure Back (cold patching material)
- Rubber Repair Gum - Quick Cure
- Rubber Solvent
- Soapstone and Mica
- Tread Gum

CASH DISCOUNTS

With the exception of Gutta Percha, the group were unanimous in recommending that cash discounts be reinstated on camelback, padding stock and stripping stock as it now applies on all other repair and treading materials.

CAMELBACK

. . .

It was recommended that there be no change in the price for the Grade 'A' synthetic type as outlined above. For the crude rubber type in 6" crown width and over, and 14/32's gauge and over a price of 39¢ East and 41¢ West was recommended.

. . .

TIRE DISTRIBUTORS

Goodrich gave notice that they could not continue to confine the sale of their repair materials to tire distributors at established preferred prices, because competitive companies had:-

- (a) Failed to report all accounts being sold at other than dealer prices.
- (b) Sold additional accounts at preferred prices without reporting those accounts for listing.
- (c) Sold accounts at preferred prices, when accounts were not tire distributors.

B. F. Goodrich will continue to adhere to established preferred prices, but feels that in order to meet competition must be free to sell other than tire distributors at preferred prices.

In reply to the above statement Mr. Wray of Dunlop tabled copy of a letter he had received regarding a meeting held in Montreal which read as follows:

'On Monday, April 14th, a meeting of the Rubber Companies, Tire Division, was held at Goodyear's office. During the course of the meeting, it was learned that both Dominion and Goodrich have a jobbers discount of 15% on Camelback, and also on repair materials when sold to what they termed a jobber or wholesaler who in turn was stocking it for sale to re-cappers or repair shops. We have no such arrangement and I think it would be well if you clarified this so that we would be in a competitive position.'

In reply, Messrs. Delorme and Millar advised they do not know of any accounts being sold at preferred prices who are not approved Tire Distributors. They agreed to check with their Branch Managers at Montreal immediately in an attempt to get this matter cleared up and will advise the secretary.

. . .

BONUS FOR VOLUME ON REPAIR MATERIALS

It was suggested that effective November 1st, the bonus for volume be dropped on all repair materials and an equivalent reduction of 10% be made in the list prices. There was some difference of opinion of this proposal and therefore it was decided that it should be submitted to the Sales Managers for their decision.

. . ."

(Exhibit 2388B)

The copy of the minutes obtained from Dunlop is marked on the upper righthand corner with the following typewritten words: "Corrected copy rec'd July/47". The recommendations on the prices of camelback were approved by the sales managers of the Tire Companies at a meeting held on May 13, 1947 (Exhibit 2208). The minutes of a meeting of the Accessory Group held on June 24, 1947 record the following with respect to their recommendation on the prices of camelback and also courtesy discounts:

". . .

DECISIONS OF SALES MANAGERS AND GENERAL MANAGERS RE ACCESSORY RECOMMENDATIONS OF APRIL 30TH

- (a) Camelback Recommendation approved (effective May 31, 1947)
- (b) Courtesy Discounts Recommendation approved (effective May 31, 1947)

..."

(Exhibit 2266B)

These minutes were obtained from the Association. Another copy (Exhibit 2585) obtained from Dunlop is identical but, like the minutes of April 30, 1947 carries on the upper righthand corner the typewritten notation: "Corrected copy rec'd July/47". These notations were evidently added after the revised minutes were received by Dunlop.

On July 2, 1947 G. K. Macpherson of Gutta Percha wrote the following memorandum to J.M. Allison, Comptroller of the company, respecting camelback prices:

"There are some indications that Canadian Camelback accounts are considering the importation of their Camelback from United States, in view of the high price level prevailing now as compared with pre-war.

While this matter has not been brought up for discussion yet at any Accessory Meeting, we feel that we should be prepared to discuss any proposed revised price levels that may be suggested.

Looking back at the price basis in effect in 1940, it may be noted that the price basis was 28¢ per pound in Eastern Canada, and 30¢ per pound in the West, which prices included sales tax and were subject to cash discount, and a maximum of 10% bonus, and were freight paid to any railway point in Canada in minimum 100 pound lots, or f.o.b. our branches in any quantity. This was for crude rubber grade. The present price levels are as follows: Eastern Canada Grade A Synthetic, 37¢ per pound, crude rubber Grade 39¢ per pound; Western Canada, Grade A Synthetic, 39¢ per pound, crude rubber Grade, 41¢ per pound. The same terms apply now as in 1940, except that this line is not subject to bonus.

It may be noted that while we realize there is an increase in the cost of production over all, there is one factor which provides for a saving, and that is the use of Polyvinyl alcohol film, in place of the much higher priced Holland Linen, or Textolin which was formerly used.

We shall be pleased to have a study of this made and your recommendation of the minimum price level that we can accept."

(Exhibit 2505A)

About the end of September 1947 the price of camelback was evidently reduced by 2¢ and on October 3, 1947 the secretary of the Associated Quality Recappers of Ontario wrote the following letter to C.N. Larsen, Sales Manager of Gutta Percha:

"On behalf of the ASSOCIATED QUALITY RECAPPERS OF ONTARIO, I am addressing the following letter for your consideration:

It is the feeling of the members of the Recappers Association that, due to the recent reduction in the prices of new tires, a revision of recapping prices may be found necessary to maintain a competitive price for recapping, in relation to the price of new tires.

. . .

We have recently received notice of a 2% reduction in the price of camelback costs. Although we appreciate this apparent consideration, we do not think the reduction sufficient.

We understand there is a jobbers' price on camelback, which is considerably lower than dealer. Since all our members purchase their requirements direct from their various rubber companies, we are at a loss to understand who would be obliged to buy at jobbers' price, and would respectfully suggest that recappers be placed in a position to purchase their requirements at jobbers' prices when buying direct.

. . ."

(Exhibit 2502C)

Attached to the above letter was a hand-written note over Mr. Macpherson's initials (G.K.M.):

- "1. We have no special discount for jobbers. There is an agreed industry distributor discount of 15% on camelback & repair materials.
2. Distributors are not jobbers - they operate supposedly in lieu of a company branch.
3. Goodyear management criticised Mr. Jeeves Mgr. of Accessories for the small reduction of 02% - said it should have been greater - but agreed to maintain Jeeves agreement with the rest of us.

. . .

6. Repair Material price will be discussed at a meeting of accessory group on Monday Oct.6.

May I suggest that a reply to this be withheld until after our meeting and may I have the letter to take with me to meeting."

(Exhibit 2502B)

No minutes were obtained for the accessory meeting held on October 6, 1947 but the matters discussed are recorded by G. K. Macpherson of Gutta Percha in a memorandum to M. C. Moyer, the Manager of this company's Tire Division, dated October 7, 1947. The memorandum deals, amongst other things, with the letter from the Associated Recappers:

"At a meeting of the accessory representatives held at the Rubber Association yesterday morning, the following matters were discussed and recommendations as noted were made.

1. Goodrich re-affirmed that they were offering repair materials and camelback to jobbers at 15% discount and would pay the bonus of the jobbers' customers when requested to do so. This plan of distribution on the part of Goodrich is not in line with agreements made by the rest of the companies at an earlier date, whereby these materials could be sold through tire distributors at a maximum of 15% and earned bonus paid to the accounts that were being supplied.

The Goodrich attitude is that several companies were not restricting their sales to tire distributors only in order to be competitive they claimed the right to offer their materials to any of their jobbers that they thought fit.

2. A proposal to drop the bonus on all accessories including repair materials and camelback was discussed and on a vote taken the following were in favour: Dominion, Dunlop, Goodrich, Gutta Percha and Seiberling. Goodyear were not in favour and Firestone withheld their vote but agreed to abide by the vote of the majority. This recommendation is contingent upon an equivalent reduction in the list prices of the materials listed on the attached. Subsequent discussion lead to an agreement that the prices on these materials should be reduced 10%, which is a rate in excess of the actual average bonus earned and thus could be considered as an elimination of bonus, plus a reduction in price.

It was also recommended that the rayon repair cord be reduced to a level 25¢ per lb. higher than cotton repair cord, as compared to the present spread of 40¢ per lb. As each company must obtain the approval of their individual Managements, I would be glad to have our Company's decision on this at an early date, as if this new basis is established, it will become effective November 1, 1947.

3. Booking Terms: In an earlier meeting Goodrich announced their intention of adopting booking terms on accessories. The said terms to be exactly the same as for tires. After considerable discussion in which all companies, except Goodrich, stated they were not in favour of this plan, Goodrich agreed to withdraw and carry on for the next season at least without these booking terms.

4. The letter from the Associated Recappers was discussed and no further reduction, for the time being at least, is proposed by any of the companies for camelback. As noted in an earlier paragraph of this report, a relatively small reduction in certain repair materials is recommended. This last was also requested by the Associated Recappers.

5. Fan Belts - Goodyear proposed a price adjustment in some sizes of fan belts and were supported in this by Dunlop. Goodrich were not prepared yet but recommend a reduction in discount. No agreement was reached but this will be reviewed at a later date by these manufacturing companies.

. . ."

(Exhibit 2508)

Goodyear, which is reported in the above memorandum as being opposed to the suggestion of dropping the bonus or allowance on all accessories and repair materials, subsequently sided with the majority on these proposals. The following announcement was sent by H. E. Jeeves, Goodyear, to the company dealers on October 24, 1947:

"TO GOODYEAR DEALERS:

Commencing November 1st, 1947 a new program on Repair Material Sales, which we believe will benefit every repairman, will go into effect.

1. The price on all Repair Materials will be reduced. This reduction is at least 10% on all Vulcanizing Material items, and in some cases even greater.
2. Beginning November 1st, 1947 the bonus for volume on all Repair Material Sales will be discontinued.

In view of the fact, however, that the reduction in price is 10% and that the new maximum general tire and tube bonus for volume effective November 1st, is 8%, it can readily be seen that the reduced price on Repair Materials more than compensates for eliminating this material from the general volume for bonus.

The few Accessory items which at the present time are subject to bonus, will no longer be in the bonus class beginning November 1st, 1947.

We believe that the majority of repairmen and retreaders will welcome this new program as it will better enable them to determine the exact operating costs of their repair and retread departments.

New Repair Material Price Lists covering the new prices will be mailed to all vulcanizers and retreaders within the next few days."

(Exhibit 2395)

The new dealer contracts issued by the Companies for the tire year beginning November 1, 1947 made no provision, as the existing contracts had done, for the allowance on accessory and tire repair material items. This was but a part of the general revision of the bonus structure which is described as well in Section D of Chapter 4 of Part III of this Report.

Chapter 3 - Oral Evidence Generally

It was generally stated in the oral evidence that the documents were misleading in their references to agreements and that no agreements or understandings had in fact existed. It was also stated that in many instances what were represented as agreements were unilateral announcements of policy by one company, and it was further stated that certain of the reported agreements were never followed. The effect of the oral evidence can best be given perhaps by setting out verbatim a number of excerpts.

C. B. Cooper, General Sales Manager for Goodyear, gave evidence in the capacity of one who had reviewed accessory recommendations at sales managers meetings:

"BY MR. BEAUCHEMIN:

- Q. The last item on Exhibit 2233 deals with an Accessory Meeting of February 19th. It says:

'The Secretary placed before the Meeting for consideration the recommendations made at the Meeting of Accessory Representatives held on February 19th (1946) covering the following points, discontinuance of quantity discounts and disposal of second grade material. It was decided to hold these questions for consideration at the next meeting.'

Was that one of the topics which were brought up usually at these Sales Managers' Meetings, the recommendations or decisions of Accessory Managers at their own meeting, Mr. Cooper?

- A. Well, it all depended on whether they had had a meeting or not. I don't recall that particular conversation or discussion.

BY THE DEPUTY COMMISSIONER:

- Q. Do you recall at any time recommendations being reported to you by the Secretary as having come from the Accessory Managers' group as reported to you at a Meeting of Sales Managers, and the Sales Managers as a group being invited to approve or disapprove of those recommendations?

- A. I recall that there were meetings of the Accessory Committee and their discussions, a record of their discussions was indicated or covered, reviewed by the Secretary to the Sales Managers.
- Q. From what happened at the Sales Managers' Meetings with reference to that item?
- A. Well, we individually may have said, I think that is foolish, or we won't do it, or we haven't any second grade material, or whatever the discussion was, they are not interested. The fellow across the table might say, well, I damn well am. I think you should be, because I know you did so-and-so at such a place. Well, I might say, I will check into it but I don't think we did.
- Q. That mentions cases where the recommendation would be rejected: Would it ever be approved by the Sales Managers' Meeting?
- A. Individually a company might say, I think we will do and so. That is exactly what might take place.
- Q. What I am getting at is - if you can help me on this, if you can recall what transpired in this type of incident - but where it is indicated in these meetings -- now this is not an example, it apparently was not disposed of -- but where it is indicated in these Minutes, an incident of this sort, and it is noted that the Sales Managers approved these recommendations, that is what the Minute says. . . now how am I, sitting here as a Commissioner to interpret that, according to your experience at these meetings?
- A. Well, you are putting me in the position where I as a gentleman want to give you the meaning to the best of my knowledge and capacity, give you the meaning of what took place and I am very glad to do that. But, as far as to the best of my knowledge, this is the way I would interpret that: That no company said, I don't like the recommendations. Where the recorder said, well apparently he was satisfied. Now there is no one here that says they aren't going to do this, but they may have gone out and not followed that practice. According to the Minutes they approved this, but what actually took place, they didn't say I won't do this or we are not doing it.

- Q. I am afraid I have beaten the gun a little on this. In the Minutes of the next Meeting on March 25th, a recording he had in Exhibit 2231, on page 3, this same matter which was held over from the previous meeting is referred to in the middle of the page, and you will note the first recommendation:

(1) Recommendation that quantity discounts on accessory and repair materials be discontinued when price control is lifted, and the Meeting concurred in the recommendation.'

Now first of all, do you recall this subsequent discussion?

- A. Well, to this extent, I recall it to this extent, that if we were told, this is what the Managers of the Accessory Department said that they would like to see done, it might be that our representative in that meeting didn't agree with that at all, but by the time it got, as I say, into the Sales Managers' hands, why that was discontinued or it wasn't disclosed. Now they say that the meeting concurred in this recommendation -- well, that is a new one in these Minutes. concur. Just what the meaning of concur is ---

...

- Q. Without reference to this particular incident, as I recall - you can correct me if I am wrong, Mr. Beauchemin, there are quite a few cases where there are recommendations or concurred in or approved.

MR. BEAUCHEMIN: Yes.

- A. It is quite possible, even though in my memory I can't see that meeting or remember it exactly, that that was discussed at that meeting, but I can quite understand that those present would say, now when price controls are lifted that is what I am going to do, that is what I am going to say to my General Manager that I would like to do. And if no one said differently, then they concurred, as far as the recorder is concerned. I should hope I am not unduly emphasizing this point, but here is a party writing up Minutes whose primary object is to indicate that this sort of a thing pays as far as the industry is concerned, getting together and discussing some of these things is a good thing and entirely, within his line, within the law, and he is certainly going to word the Minute so that it will look as good as possible. How could he do otherwise in fairness to himself? That is his business.

. . .

Q. I am referring here to this sort of item which we have been discussing, with reference to this type of item, that is, approval of recommendations of the Accessory Group, for example. Now where it said the recommendation was approved or was concurred in or was agreed to, that to you would mean that one company would say that sounds okay to us?

A. As far as our company is concerned, I would say that is our practice.

. . .

Q. Well then, just to revert to this first item, you were saying that most of these instances was a case of recording what was the present practice of the individual companies as far as you were concerned?

A. That is right.

Q. Well now, what happened in the case where the future intention was announced?

A. We have indicated there what we intended to do.

Q. Yes?

A. We may or might not have done it, I don't recall.

Q. You don't recall whether or not you would have indicated concurrence or whether or not you took that action?

A. Well, by these Minutes I would say that we indicated that that was the way we would probably do it, but I wouldn't say that that was what we probably did.

BY MR. ROBINETTE:

Q. Would it be fair to say that that is what you then probably intended to do but that you weren't in any way bound to adhere to that?

A. Yes, that is the situation."

(Evidence, pp. 6984-6992)

H. E. Jeeves of Goodyear stated in his evidence:

"BY MR. BEAUCHEMIN:

Q. What was the position of your company at these meetings which you attended? Did you propose any of these changes?

A. Undoubtedly we have, you see, we are in the position that we do manufacture for a lot of other companies repair materials, a lot of accessories, so that we found it necessary to get together at times with these fellows to tell them of changes we planned in our line. They are actually customers of ours. It is natural that people would keep them advised of changes.

BY THE DEPUTY COMMISSIONER:

Q. What sort of changes?

A. Changes in probably the line, changes in the rim to fit certain tires, so that they could fit on the rims of other cars.

Q. Changes in the prices?

A. And we might decide we are going to change our prices. We might be moving those prices down, we would have to tell those chaps, otherwise they would discover through the accounting department they were selling those at a loss, so that we furnish them. I have to keep them advised as to our programme.

Q. I don't quite follow that. Would you elaborate on that?

A. In the case of price, we sell these chaps a certain price, we decide we are going to reduce prices, selling prices; they would find out sooner or later through the accounting department, if we didn't tell them, that they were actually selling at a loss. Those mats had been bought at a certain price, we reduce our prices and show them what we suggest they be sold at, and the first thing they find they are selling at a loss, unless we keep them advised of any changes we make.

Q. And you sell large quantities to other companies of different types?

A. That is right."

(Evidence, pp. 7196-7)

Referred to Exhibit 2276 (see page 391), Mr. Jeeves said:

"Q. Then there is a last line on future meetings:

'It was agreed that in order to try to keep competition in the accessory and tire repair division of the industry on a sound basis. Meetings will be held regularly at two-month intervals in future, and that any reported infractions of industry agreements will be tabled at these meetings with full details and supporting evidence'.

Do you recall this resolution?

A. I recall that they hoped to get together that frequently. It just didn't work out that way.

BY THE DEPUTY COMMISSIONER:

Q. This phrase 'Infractions of Industry Agreements' contained there, does that mean anything to you?

A. Not particularly, no.

Q. Do you know of any industry agreements that were in existence at that time?

A. Well, we were, as I say, we have our own price lists which we ask other accounts to follow. After all, they are selling our merchandise - and if we find that somebody is selling far below those figures, we try to get them together and point out that it is not profitable from their standpoint, that they are enjoying a certain margin from us, and that it is causing confusion, making things difficult for all concerned. Now possibly that is what they mean by infractions there."

(Evidence, pp.7200)

With reference to Exhibit 2272 (see page 399), Mr. Jeeves said:

"Q. In the same Exhibit 2272, it records a discussion on accessory jobbers' prices and qualifications for obtaining those prices. It says:

'As agreed at the last meeting the group reviewed the list of qualifications which a jobber must fulfill before being entitled to buy at jobbers' prices. It was agreed that the following policy be adopted by all companies.'

A. It never was.

Q. It never was followed?

A. It never was followed. It was never adopted. We all have our own jobbers' list. We had those names on our own list and we all have different lists entirely.

BY THE DEPUTY COMMISSIONER:

Q. You mean there was no discussion of this sort?

A. There was a discussion but it didn't work out on none of those things. It would have been very lovely if it could have been handled."

Referred to Exhibit 2460 (see page 402):

"Q. Then I would like you to look at another exhibit, which is Exhibit 2460, dated November 25th, 1946. It appears to be an inter-office memo from you to Mr. Cooper. Do you recall having seen this letter?

A. Well yes, I must have it is over my signature there.

Q. This 'J' here?

A. That is my 'J'.

Q. You will notice it reads: 'At a meeting of Accessory Managers held on November 21st, it was unanimously agreed that the following price increase should be submitted to Sales Managers for their approval. We understand the Sales Managers' Meeting is being held tomorrow, November 26th, and we will appreciate your endorsing of these increases.' And it gives a suggested increase of twenty per cent for straight rad hose, ten per cent for curved rad hose and ten per cent for windshield wiper tubing. Then you say:

'The above items are no longer subject to control as ceilings on them were removed by W.P.T.B. Order 642. Larger increases than those suggested are actually needed but it was felt by those present at the meeting that the actual selling prices we should have should be reached by one, two, three small increases at intervals rather than one big jump at the present time.'

'Gutta Percha have been advised by the Wartime Prices and Trades Board that controls were lifted on floor mats. And as Gutta Percha and ourselves only manufacture it, we have decided we would like to add a twenty percent increase to the price of car mats.'

By 'unanimously agreed' in this letter, Exhibit 2460, what do you mean?

A. I think that that wording, of course, is unfortunate, because that is something that I suggested myself to the companies present there. In the main they bought their fan belts, rad hose, from us, and I suggested that we were going to increase our prices. But, we still can't agree, because it isn't in our power to agree to that sort of thing. We still have to go back to our sales managers.

Q. Did you announce that Goodyear was proposing to increase the price?

A. That is right."

(Evidence, pp. 7228-30)

G. K. MacPherson of Gutta Percha gave the following description of the accessory meetings:

"Q. Did you receive notes from Mr. Oakie, prepared by Mr. Oakie, of those meetings?

A. Not necessarily, I would make notes of my own. He may have made notes that I didn't receive, but these meetings were rather haphazard. When you refer to a meeting, it wasn't something you would say, now look, this is an official meeting. I may have some prices to prepare and I might say, I am going to issue some new prices, do you want to see them before I issue them. That was it. You would call that a meeting. I can recall one case --

Q. These meetings were called by Mr. Oakie usually, were they?

A. Not necessarily. Anybody might phone and say do you want to see the prices I am going to issue. Would you be interested? They may or they may not.

. . .

Q. In what form did you keep your own notes?

A. Oh, I would write them down. I might have gone down and said, look, I am going to have to increase my prices on so-and-so and the boys want to hear what they are going to be. Then if I got a price list out, that was it. That is all I had. I would have nothing beyond that."

(Evidence, pp. 6655-6)

Referring to the camelback incident in which Dominion had been charged with price cutting in the Montreal market, and to a letter written by Mr. MacPherson to G. B. Smith of the Association on December 13, 1945 (Exhibit 2307), Mr. MacPherson said:

"Q. Well, that second paragraph begins: 'We feel that they should be called upon to explain this action in view of the agreed price basis for this line'. Was there an agreed price basis among the rubber companies selling the accessories?

A. No. Probably that is the most misconceived statement of anything we have had in our organization. I am not referring to the other departments beyond accessories. We would only table the prices at which we were selling our accessories - at least, at which we said we were selling them. That didn't go, because nobody believed it. As one fellow said to me once, that is a ceiling price for us. I said, we each make our own decisions on what the prices shall be. You had to do that in terms of enough to cover your cost and yet low enough to be able to sell, because you are meeting competition.

Q. Well, Mr. MacPherson, doesn't this go a little beyond the matter of tabling prices? Evidently it is something in the nature of a complaint that Dominion are selling camelback at a particular price. You asked that it be brought to their attention and you state you feel they should be called upon to explain their action?

A. That is the way it is worded, you see.

Q. Yes, that is the way it is worded?

A. Yes, and I read it. Frankly, there was no such thing as an agreed price. There was certainly a lot of agreement among those who were represented. Mind you, I still say we had no authority to permit our company to anything of that nature. I might call upon somebody and say I think you ought to do so-and-so, but that doesn't bind the company. That is a personal opinion."

(Evidence, pp. 6659-60)

Referred to Exhibit 2503 (see page 403), Mr. MacPherson described the meeting in February, 1947:

"Q. In this particular instance were these discussions before the price lists were issued?

A. This happened February 20th, if I recall correctly this one, one of my acquaintances in the other company was home ill, Mr. Jeeves. I was talking to his office about something or other, because we buy from them, and he lives out next door to a friend of mine and I was out to see the friend of mine and I dropped in to see Harry Jeeves. Then I said, Harry, I am going to put out some new prices and I don't want you to think that I am taking you at an advantage. It may be higher or lower, and I told him what the prices were likely to be. I was getting a new price list out at that time, and we buy our fan belts from them, and I wouldn't want to issue a new price list on fan belts to Goodyear and then find I have to get more for the belts that we sell.

. . .

Q. Well, this document, Exhibit 2503-A in the second paragraph, the second sentence says:

'Items under Group B will be considered by the management of the manufacturing companies and if approved, automatically become our price level.'

And then in the last paragraph you refer to getting in touch with other accessory representatives. Does that not sound like more than just a meeting with Mr. Jeeves?

A. No, there was more than Mr. Jeeves. One of the other company representatives was in town, and we buy and sell one with the other, and I told them I proposed to issue a new price list.

Q. Where was this meeting?

A. At Mr. Jeeves' house. We dropped in to see him.

Q. And the rubber representatives of the other companies?

A. I believe a couple of the other fellows were there. Harry is in touch with them just as much as I am."

Referred to Exhibit 2508 (see page 411), Mr. MacPherson stated:

BY MR. BEAUCHEMIN:

"Q. Mr. Macpherson, I would like you to have a look at Exhibit 2508, which is dated October 7th, 1947. It is a memorandum to Mr. Moyer, and it apparently has your initials at the bottom on the second page.

A. That is right, I signed this. Do you want me to read all of this?

. . .

Q. Item 2: 'A Proposal to drop the bonus on all accessories including repair materials and camelback was discussed and on a vote taken the following were in favour: Dominion, Dunlop, Goodrich, Gutta Percha and Seiberling. Goodyear were not in favour and Firestone withheld their vote but agreed to abide by the vote of the majority. This recommendation is contingent upon an equivalent reduction in the list prices of the materials listed on the attached. Subsequent discussion led to an agreement that prices on these materials should be reduced ten percent, which is a rate in excess of the actual average bonus earned and thus could be considered as an elimination of bonus, plus a reduction in price.

'It was also recommended that the rayon repair cord be reduced to a level twenty-five cents per pound higher than cotton repair cord, as compared to the present spread of forty cents per pound. As each company must obtain the approval of their individual managements, I would be glad to have our company's decision on this at an early date, as if this new basis is established, it will become effective November 1st, 1947'. Do you recall that discussion?

A. What do you mean by that?

Q. Do you recall the discussion?

A. That we discussed such matters. I can recall there had been talks on this matter. I can't recall at any specific date. I do know we have discussed what a logical method of merchandising might be.

- Q. Well, such as you reported here in Item 2, is that a true report of what took place?
- A. So far as I am aware, each of us gave opinions and I would advise my management of what the individuals' opinions would be."

(Evidence, pp. 6717-8)

It is true that certain of the Companies were dependent upon others - particularly Goodyear - for certain of the accessory and repair material products which they handled, and that such relationships would create more even than the normal interest in each other's prices. The pricing arrangements were not restricted to such products however and in any event the explanations that were offered do not suffice to change the nature of the arrangements from that which appears on the face of the documents, such documents being many in number and consistent in pattern and extending over a long period.

PART V - RUBBER FOOTWEAR

Chapter 1 - Introduction

A. The Rubber Footwear Industry

This Part is concerned with trade arrangements relating to the manufacture, distribution and sale of rubber footwear in Canada. Such rubber footwear comprises chiefly rubbers, all-rubber boots, rubber bottoms with leather tops, overshoes and rubber-soled footwear with canvas or other fabric tops such as tennis, badminton and play shoes.

Many types of rubber footwear are essential articles of clothing in Canada because of the climate. Aside from the requirements of the urban population there are the farmers, fishermen, miners and workers in the forest industries who need heavy rubber footwear in the execution of their work.

In 1948 Canadian manufacturers produced rubber footwear having a selling value of \$36,576,103, of which \$3,236,055 worth was exported.⁽¹⁾ Imports amounted to \$406,733.⁽¹⁾ Rubber footwear accounted for over 18 per cent of the total value of output of the Canadian rubber industry as a whole. The corresponding figures for 1949 were respectively: \$29,736,753⁽¹⁾ \$1,178,306;⁽¹⁾ \$99,315⁽¹⁾ and 16 per cent. The duty, since 1932, on those products which receive a rubber classification for duty purposes, has been 25 per cent General, 22½ per cent Most Favoured Nation and entry has been free under the British Preference. On lines not receiving a rubber classification the duties have been higher.

There are nine substantial manufacturers of rubber footwear in Canada, six of whom are members of The Rubber Association of Canada and in the case of a seventh, its sales company (Kaufman) is a member. In 1948 these seven manufacturers accounted for more than 85 per cent of the total value of sales by the nine companies.⁽²⁾

B. Members of the Association

The seven rubber footwear companies above mentioned may be grouped, in size, as follows:

Group 1

Dominion Rubber Company, Limited - This Company is the largest rubber footwear manufacturer in Canada, accounting, in 1948, for about one-third of total production. It is controlled by United States Rubber Company. Dominion controls Northern-Woodstock Rubber Limited whose activities are now confined to the distribution of rubber footwear manufactured for it under an agreement with Dominion. Northern-Woodstock resulted from the amalgamation in 1942 of Woodstock Rubber

(1) Source: Dominion Bureau of Statistics.

(2) Source: Returns submitted by the manufacturers.

Company Limited (herein called "Woodstock") and The Northern Rubber Company Limited (herein called "Northern").

Group 2

Each of the five following manufacturers, while substantially smaller than Dominion, is an important producer and offers a fairly complete range of rubber footwear:

The Acton Rubber Limited - This Company is a wholly owned subsidiary of Alfred Lambert Incorporated which buys and resells the entire output of Acton. These Companies are controlled in Canada.

The B. F. Goodrich Rubber Company of Canada Limited - Goodrich is a subsidiary of The B. F. Goodrich Company, Akron, Ohio.

Gutta Percha & Rubber, Limited - This Company is controlled in Canada.

Kaufman Rubber (Ontario) Limited - This is the manufacturing company, while Kaufman Rubber Company Limited is the sales company. These Companies are controlled in Canada.

The Miner Rubber Company Limited - This Company is controlled in Canada.

Group 3

Cambridge Rubber, Ltd. - This Company is a wholly owned subsidiary of The Cambridge Rubber Company, a Maryland corporation.⁽¹⁾ The output of this Company is relatively small. Before the war it concentrated mainly on the production of its own distinctive styles of footwear and when this investigation commenced it was beginning to revert, in some measure at least, from the standard products it made during controls, to the specialty field. In 1948 sales by Cambridge amounted to less than 2 per cent of the total sales of all the Companies mentioned in this Part.

C. Non-Member Manufacturers in Canada

Bata Shoe Company of Canada Limited - This Company did not begin manufacturing waterproof rubber footwear until about 1945 and it has confined its production to a limited range. While not a member of the Association, this Company has sometimes attended meetings and participated in discussions.

Mailman Corporation Limited - This is the manufacturing company for which The British Rubber Company Limited, a subsidiary, acts as selling agent. Throughout this Report both principal and agent and also

(1) See footnote on page 4.

a predecessor company of the principal will be referred to as "British". Although a newcomer to the industry, British now ranks among the larger producers. While not a member of the Association, British has sometimes attended meetings and taken part in discussions.

D. Association Activities

The seven members of the Association who manufacture or sell rubber footwear have formed themselves into the Footwear Division or Group. The dates when they joined the Association are shown in Part I. The Footwear Division has engaged in the collecting of statistics and in other matters that are of like interest to the industry and also in the holding of meetings, attended mostly by the sales managers, at which agreements relating to the manufacture and sale of rubber footwear have been arrived at.

The use made of the Association by member rubber footwear companies has varied considerably through the years. Prior to 1932 they held their meetings under its auspices. In 1932 the principal rubber footwear companies⁽¹⁾ formed a separate association called the Canadian Rubber Footwear Manufacturers Association and, while not relinquishing membership in the Rubber Association, where held, they did not make much use of it during the lifetime of the new organization.

In 1938 the Canadian Rubber Footwear Manufacturers Association dissolved. From that time on the rubber footwear companies gradually increased again their use of the Association. Meetings were held under its auspices with the late J. C. Mills, an official of Dominion, often acting as secretary. Toward the end of 1944 or the beginning of 1945 G. B. Smith, Secretary and Manager of the Association, took over the duties as Secretary of the Footwear Division and he continued to carry out these duties until October or November 1947. Since that time, the activities of the Footwear Division have been continued although it has not had a permanent secretary. An official of a member company has acted as secretary at the meetings and G. B. Smith has continued to gather statistics for the rubber footwear manufacturers in his capacity of Secretary and Manager of the Association.

E. Production, Distribution and Pricing

(a) Production

-
- (1) Dominion Rubber Company Ltd. and subsidiary companies; Gutta Percha & Rubber Ltd.; Kaufman Rubber Company Ltd.; The Miner Rubber Company Ltd.; Northern Rubber Company Limited; Canadian Goodrich Co. Limited; Acton Rubber Company; The Woodstock Rubber Co. Ltd.

Rubber footwear is divided into two broad classes, waterproof and canvas, or tennis as the latter is sometimes referred to. Consumer demand for waterproof lines reaches its peak during the cold and wet months, while that for canvas occurs during the summer. The industry goes through an annual cycle of activities based upon these seasonal variations in demand.

Sometime during March or April each manufacturer usually announces his waterproof range for the ensuing twelve months. This is followed by the opening of the waterproof "placing" season which may last for several months. This is the period when retailers place their orders in preparation for the fall and winter trade. During this period retailers are sometimes offered more liberal credit terms than at other times of the year as an inducement to the early placing of orders, which facilitates proper production planning by the manufacturers and lessens warehousing. Waterproof footwear orders taken after the "placing" season are usually for replenishment of particular lines and are known as "sorting" orders. Similarly, most companies announce their canvas range sometime during September, and this is followed by the canvas "placing" and then the canvas "sorting" seasons. As much as a year of planning may precede a manufacturer's announcement of a canvas or waterproof program.

The sales value of canvas footwear produced in Canada was, on the basis of the 1947 and 1948 production, approximately 13 per cent of the sales value of canvas and waterproof combined.

(b) Distribution

Most of the Companies keep salesmen on the road and ship goods to retailers either from their factories or from branch warehouses. A certain amount of business is done through jobbers who are required to sell on the same terms as those of the manufacturers whose goods they are jobbing. It has been estimated (Exhibit 362) that about 20 per cent of the total industry volume of business is done through jobbers, 90 per cent of which is done by about 10 per cent of the jobbers. In most cases a large jobber is the particular agent of one manufacturer and, therefore, to a considerable extent under his control.

(c) Pricing

Rubber footwear lines, both waterproof and canvas, are classified either as standard lines or specialty lines, and the method of quoting prices on the former differs somewhat from that on the latter. Standards are lines each one of which is produced by at least two - and often by all the manufacturers according to substantially similar specifications. Specialties are lines each of which is usually produced by only one manufacturer and which is appreciably different from its closest substitute; if a specialty becomes popular it may develop into a standard line. Broadly speaking, the standard lines are the lines that have been tested by general consumer demand. In 1948 about 85 per cent of the total domestic sales value of rubber footwear was made up of standards, the remainder being specialties.

All the Companies except British and Cambridge quote list prices on their standard lines, net prices being determined by the application of varying discounts. British quotes on a net basis. Cambridge employs a system of customer classification peculiar to itself, which involves a mixture of list and net prices. Methods of quoting prices of specialties vary from company to company.

Chapter 2 - The Period before Wartime Controls

A. The Hardy & Badden Agreement

Although there is much evidence of arrangements relating to production and prices in the rubber footwear industry back as far as 1924, the period covered by the present investigation extends back only to 1932. On January 2 of that year the then leading companies⁽¹⁾ became parties to a signed agreement which came to be known as the Hardy & Badden Agreement. The principal terms of the Agreement were:

1. The Canadian Rubber Footwear Manufacturers Association was formed with the firm of Hardy & Badden, accountants, acting as secretary. This firm played an important role in the formation of the Agreement, and much of the subsequent business of the Association, including the holding of meetings, was done at their offices.
2. All parties undertook to observe prices as agreed upon from time to time.
3. A sales quota arrangement was agreed upon. Companies exceeding their quotas were to pay to Hardy & Badden a percentage of the selling value of excess sales which was then to be distributed amongst companies which failed to reach their quotas. Quotas were altered from year to year according to a set formula.
4. Imposition of penalties for violations of the Agreement was agreed upon. Members were required to deposit funds with Hardy & Badden as a guarantee of good faith and as surety for any penalties which might be imposed for violation of the Agreement.

B. The New Discount Structure

A change of considerable importance in the structure of discounts on rubber footwear sales was embodied in the arrangements made under the Hardy & Badden Agreement. This change was destined to exert a lasting influence over the conduct of the industry and in fact the essential features of this new discount structure have been retained by the industry up to the present time.

Previously, with the exception of very large accounts, each manufacturer had graduated the percentage discount from list prices to an account, in accordance with the annual volume of business he received from that account. In the case of very large accounts the manufacturers had agreed upon rates of discount based, broadly, upon the total annual volume of business received from that account by all the manufacturers combined.

(1) Dominion Rubber Company Ltd. and subsidiary companies; Gutta Percha & Rubber Ltd.; Kaufman Rubber Company Ltd.; The Miner Rubber Company Ltd.; Northern Rubber Company Limited; Canadian Goodrich Co. Limited; Acton Rubber Company; The Woodstock Rubber Co. Ltd.

Under the new discount structure the principle which had previously been applied only to some larger accounts was extended to all accounts except the very smallest, who received no volume discount. That is, the volume discounts were based upon each account's aggregate annual purchases from all the manufacturers combined. In the cases of the largest accounts, this principle was still applied by listing them into discount groups which corresponded generally with their annual aggregate purchases from all manufacturers and sending the resultant classified accounts lists to all manufacturers. Lesser accounts were made eligible for volume bonuses at rates which varied directly with their aggregate annual purchases from all manufacturers combined. Thus, under the new discount structure the rule was that discounts were not based upon the annual purchases by a customer from any one rubber footwear manufacturer nor upon the size of any single order placed; and a retailer could not normally expect a larger discount from any manufacturer by placing a larger proportion of his business with that manufacturer.

The operation of this discount structure required the pooling of information on annual sales by all manufacturers to all accounts. Hardy & Badden performed the task of compiling the necessary information, and all manufacturers supplied them with their sales figures for this purpose. Such a system provided the basis for a flexible and easily policed price agreement.

C. Break-up of the Agreement

The above agreements were put into effect and successfully maintained until 1936. Sometime during that year, however, the effectiveness of the Hardy & Badden Agreement began to lessen and it was dissolved in 1937.

One principal cause of the break-up of the Hardy & Badden Agreement was that British, which had been established in 1935, and which had not become a party to the Agreement, was making its competition felt in the industry. By 1938 it had captured an appreciable share of the total domestic market. The rapid expansion of British was evidently made possible by its willingness to sell at prices below the artificial levels established under the Agreement and this competition could not be met by the other manufacturers until they were free to meet British prices. A number of other factors, such as disagreement over allocation of sales quotas and mutual distrust among the Companies appears also to have contributed to the break-up of the Agreement. On May 1, 1937 the Agreement was replaced by one that was less far-reaching and this, in turn, was abandoned about April 1938 and the Canadian Rubber Footwear Manufacturers Association was dissolved although the name continued, for some time, to be used in connection with joint activities by the Companies.

One of the last documents belonging to the Hardy & Badden period is the following letter written to Miner, Gutta Percha, Kaufman, Northern, Dominion, Woodstock, Goodrich and Hardy & Badden by J. A. Boivin of Acton on April 25, 1938 which has indirect reference to the impact of British:

"Referring to letter received from Kaufman Rubber Company Ltd, dated April the 23rd., we are not in favour to change any classified

names as per list published on the 18th., inst., although it is possible that some merchants may be qualified for an higher bracket if we should consider their purchases from British Rubber.

Our reason for this decision is based on the fact that it is only fair to allow proportion to merchants who have kept within members of the group and we do not believe that any outside purchases should be considered, due to the fact that we have had no control whatsoever on same.

As to quotation to Governments, we are in favour of meeting competition after consulting with others.

Re: Monthly sales Reports:- We are in favour of continuing reporting sales, which we believe will be in advantage from many points of view."

(Exhibit 506)

D. Financial Effects of the Agreements

There is evidence to indicate that the Agreements previously mentioned worked out to the financial advantage of the participants. The following is an excerpt from an unsigned memorandum dated July 29, 1947 found in the Goodrich files:

"In the period from 1932 to 1936 -- We made normal profits. This was due in part to the protection provided under an Industry cartel arrangement."

(Exhibit 796)

In a letter dated April 16, 1941 written by G. W. Sawin, then Vice-President and General Manager of Goodrich to John L. Collyer, President of the United States parent company, Mr. Sawin after referring to a report made in November 1940 by a firm of industrial engineers after their survey of Acton, Dominion, Goodrich, Gutta Percha, Woodstock, Miner, Cambridge and Northern, wrote in part:

"It was found that during the years 1932-35 inclusive, rubber footwear companies' profits were \$1,800,000. During the years 1936-39 inclusive, these rubber companies lost \$2,200,000. In other words, a shrinkage of \$4,000,000, even in the face of the improvement in general business conditions during the latter period.

During the former period, the industry operated under a pool arrangement, etc., but this was withdrawn early in 1937. . . .

It can be said here that the rubber companies operating under the pool, particularly the multiple line companies, were endeavouring during the operation of the pool to hold their footwear profits in order to offset losses in other lines. British took advantage of this opportunity and grew faster than was realized."

(Exhibit 816A)

In evidence Mr. Sawin of Goodrich stated:

". . . Then, in 1937 and 1938 competitive conditions became free and easy, and it became rather a cut throat game, so to speak, highly competitive, everybody on his own, naturally. And, in the first year I was in Canada, (1937-38) we -- to get prices to where they were when I landed (early in 1937), we would have had to advance prices about 40 per cent."

(Evidence p.3336)

E. Period Following Dissolution of Hardy & Badden Agreement

The break-up of the Hardy & Badden Agreement was followed by a period of very active competition which was manifested chiefly by the granting of special discounts to buyers. This situation which was described in the oral evidence as reaching the proportions of a price war, appears to have reached its zenith during 1938 with each manufacturer matching the extra discounts granted by his competitors. The accounts list was not adhered to or systematically maintained; but, on the other hand, it was never entirely discarded.

Several of the manufacturers, notably Dominion, Goodrich and Gutta Percha, made continuing attempts to bring about some measure of agreement. In the absence of any machinery for aggregation of customers' purchases to replace that set up under the Hardy & Badden Agreement, Dominion made its own accounts lists available to the other companies as the best substitute. During this period, the classified list was expanded to cover all but the smallest accounts, these latter remaining on the bonus for volume basis. It is noteworthy that the efforts of the manufacturers were directed towards trying to regain stability on the basis of the price structure developed under the Hardy & Badden Agreement. An alternative would have been for each company to set up its own independent price structure as British had done.

During 1938 attempts were made by the majority of the Companies to reach price agreements on both the waterproof and canvas programs. No agreement was reached, however, and price lists were issued later than usual - each company waiting to see what prices its competitors would announce.

There was a gradual improvement in the relations among the rubber footwear companies during 1939 and 1940, and a measure of uniformity was restored to the classified accounts lists. On August 12, 1939 A. B. Hannay, Manager and Secretary of the Association, wrote to representatives of all the rubber footwear companies as follows:

"Recently the above unlisted account claimed that in the twelve months period from March 1, 1938 to February 28, 1939, its purchases of waterproof and tennis footwear exceeded \$2,500, which would entitle it to be placed on the Class 'H' list with discounts of 9% for waterproof and 5% for tennis footwear purchases.

Reports of sales to this account by the companies from which it stated it had purchased, show that sales by them of rubber and tennis footwear to the above account during the twelve months ending February 28, 1939 amounted to more than \$2,500 but less than \$5,000.

Therefore, for the present year, would you please regard the above as a Class 'H' account and entitled to the discounts applicable to that class."

(Exhibit 124)

Notwithstanding the dissolution of the Canadian Rubber Footwear Manufacturers Association, meetings of the Companies continued or were early resumed. The minutes of a footwear meeting held on September 29, 1939 described as a "meeting of General Managers of rubber footwear companies" and attended by representatives of Dominion, Miner, Northern, Woodstock, Goodrich, Gutta Percha and Alfred Lambert contain the following item:

"There was a considerable discussion of the increased production costs since the declaration of war. It was agreed that it was impossible to avoid recognition of these in the prices charged for goods.

It was agreed that there should be an immediate advance of 10% in the prices of all rubber footwear including bottoms and an increase of 20% in the prices of leather tops. No change was made in discounts or terms. The decision was telephoned to the Kaufman, British and Cambridge Rubber Companies who were not represented at the meeting.

Several companies reported that they had received cabled requests from England asking for quotations on large quantities of rubber boots for departments of the British Government. The opinion was expressed that acceptance of such rubber boot orders might tie up the production of Canadian footwear to such an extent that they might find it difficult to supply the requirements of Canadian troops for training in Canada this winter or for service overseas."

(Exhibit 948)

On October 13, 1939 G. W. Charles, Vice-President and General Manager of the Footwear Division of Dominion, wrote to the rubber footwear companies in part as follows:

"It was agreed at our last meeting of Footwear Manufacturers, held at the Mount Royal Hotel in Montreal, that when we had our Tennis programme ready for the 1939-40 Season, we would forward a copy to all members. I am therefore attaching hereto our Net Price List, effective October 16th, together with a list of named accounts.

It is our intention to allow the following discounts for the various classes:

. . .

The regular selling conditions that have been in force for some years will apply, viz. cash discount, dating, interest, prepayment and transportation, plus the agreed War Clause.

. . .

It is our intention to sell our Tennis Footwear on the above stated terms, unless we are forced by competition to amend same but we sincerely hope it will not be necessary to make any changes in the attached prices, lists or discounts mentioned above."

(Exhibit 472)

The minutes of a footwear meeting held on November 27, 1939 attended by Northern, Acton, Miner, Woodstock, Kaufman, Goodrich, Dominion and Gutta Percha contain the following items:

"Elliott Marr & Company, London: Agreed that this account will take the York Trading 'D' -1 Class discount on waterproof and tennis of 10% and 2% trade and 2% cash.

Seigel Shoe Stores Limited, Hamilton:

David Spencer Limited, Vancouver:

Lefebvre Shoe Market, Montreal: Agreed that these three accounts shall be listed Class 'A' for waterproof and tennis with discounts of 15% trade and 2% cash.

Meeting adjourned."

(Exhibit 950)

On March 15, 1940 the president of Alfred Lambert wrote to G. W. Charles of Dominion:

"We have duly received, in connection with your Selling Programme of rubber footwear for the 1940-41 season, the following documents, viz:

Classification of accounts from A-1 to H, inclusively - bonus scale - Jobbers' discounts - E.O.D. discounts and period of placing and shipping, general selling conditions and revised prices, for which we wish to thank you.

We are determined to follow up this Selling Programme of yours in its entirety, unless we are forced by circumstances or unscrupulous competition to have to amend same."

(Exhibit 470)

Although there was no system comparable in efficiency to that which had existed under the Hardy & Badden Agreement, information with respect to accounts was cleared through A.B. Hannay, Secretary of the Association. There were discussions on prices and some measure of agreement was reached usually on the basis of the program of Dominion.

F. Agreements on the Eve of Controls

By the spring of 1941 the industry was well on the way to a resumption of price agreements. Agreement was reached on the 1941 "Waterproof Programme by certain of the Companies, excluding British and apparently Acton, Cambridge and Kaufman. This agreement embraced list prices, classified lists and discounts.

G. W. Sawin of Goodrich writing to John L. Collyer, President of the parent United States company, on April 16, 1941 said in part:

"In a meeting last Friday in Toronto, which followed another meeting instigated by your company, the three multiple line companies felt that we could safely move forward on a new selling program which would provide our company with about \$60,000 better recovery than we have been looking forward to. This program will be discussed with other companies Thursday and it is felt that this program will be adopted. Whether it lives, no one can determine because of the attitude of the Kaufman Rubber Company in particular. It is hoped he will go along but this is just a hope."

(Exhibit 816E)

A typewritten document dated April 18, 1941 (Friday) obtained from the files of Miner indicates that the meeting was held. The document which appears to be a memorandum of matters discussed at a meeting reads in part as follows:

"Class Lists. New class lists have been drawn up, based on actual sales as reported by the companies interested, thus excluding Kaufman, British and Cambridge, also the Toronto Footwear who made no report. Several names have been eliminated altogether, and there have been some transferences from different classes to others, so it will be necessary to make up new class lists for all branches and agents to supersede those now in effect.

. . .

In view of the changes in class lists it will be necessary to check the new lists to see that all customers in whom we are interested and who in our opinion qualify for any of the classifications are included on the correct lists as we now have them.

. . .

Prices. Herewith prices as decided upon at our meeting of yesterday. In a general way the prices on staples have not been changed, but the list prices on those lines that we think are not made by the British Rubber Company have been advanced by 5%.

. . .

Acton has diff. of 5% to all a/cs (added in long hand)."

(Exhibit 129)

Referring to this document, C. M. Mather, Sales Manager of the Footwear Division of Gutta Percha, said in evidence:

"Q. Do you recall any of these other subjects. I see there are some classified lists in there, also classes A to H are set out with the amounts included in each case. Do you recall that subject being discussed?

A. Yes,

. . .

Q. Could you tell me this, Mr. Mather, at this time, did you have or do you recall whether there was an agreement on prices with respect to these various articles made by the Rubber Footwear Manufacturers?

A. The usual procedure on price has been, to my knowledge, that the one company would issue a price list.

Q. Was there any one of the companies usually did that?

A. Usually the largest company.

BY THE DEPUTY COMMISSIONER

Q. That is the Dominion Rubber Company?

A. We would decide to follow them if we felt so inclined to be competitive.

Q. Would you care to answer the preceding question Mr. Martin asked, as to whether there was an agreement to do that?

A. My answer, sir, would be, yes, between a certain number of companies which are not all included there.

BY MR. MARTIN

Q. At this time, I understand that, according to this exhibit, Kaufman and British and Cambridge were not in the group?

A. Yes.

. . .

THE WITNESS: There was a meeting held and we followed a program of conditions and prices which were probably set by some one company.

. . .

Q. Then, you spoke about a meeting; was there more than one meeting at this time, Mr. Mather? Did this meeting continue, that is the meeting among the representatives or sales managers of the Rubber Footwear Manufacturers of Canada, did they continue to hold meetings?

A. They continued intermittently until control took over."

(Evidence pp.269-273)

Referring to the same document (Exhibit 129) T. Y. O'Neill, formerly Sales Manager of Miner, said in evidence respecting the discount structure in use at that time:

"Q. Was there an agreement among the rubber footwear manufacturers at that time with respect to classified lists and discounts? There is a reference on page 2 of this exhibit to class; that is the classified list, is it?

A. The class list, yes. Yes, undoubtedly we took some means of clearing sales, in order to arrive at the volume.

Q. But I am asking you whether there was an agreement at this time, oral or written, between the manufacturers of rubber footwear in this country in respect to a classified list, - that is, if a company had a certain volume of business, that they would be entitled to a certain discount?

A. Yes, that was my understanding.

Q. It was?

A. Yes; otherwise the class list would not have been very much good.

...

Q. What I mean is, did the Miner Rubber Company collect its own information by communicating with other companies and ascertaining from other companies the amount of business that they did with certain accounts during the previous year?

A. We got that information from them.

Q. From other companies?

A. From other companies, yes. And that was the only way we could get it. We could have laboriously gathered it from retailers. But we could not depend upon that, could we? . . ."

(Evidence pp.1045-47)

On May 15, 1941 P. C. Jones, President and General Manager of Dominion wrote to F. A. Warren of Gutta Percha, sending a copy to G. W. Sawin of Goodrich, in a way that indicates price understanding among the principal companies but excluding Kaufman, British and Acton:

"I thought you might be interested in knowing that I had a conference with some of our sales people yesterday afternoon and this morning, with the result that I definitely feel encouraged to think that the decision taken by us at the meeting on Monday last is the correct one. Without doubt we are going to have difficulties and all will not be plain sailing, in view of the Kaufman competition.

However, our people have a very distinct feeling that in spite of same, the rest of us are going to sell a lot of footwear this year and this thinking is not altogether based on wishful thinking, but rather on contacts already established with the trade to date. The general reaction of the trade at Kaufman's price being lower than prices of the other first-line companies is that he is placing himself in the same spot as British and Acton.

The object of the foregoing is not to try to sell you anything, of course, but I feel so definitely encouraged with the talk I have had with our people in the field that I thought it just as well to pass the news along, for what it may be worth, to you."

(Exhibit 812)

A further price increase seems to have been planned in June 1941 by which time the rubber footwear manufacturers were aware of the possibility of price controls. On June 16, 1941 W. H. Miner, President of Miner, wrote to A. R. Kaufman, President and General Manager of Kaufman, in part as follows:

"I have just received Sawin's notice of the General Managers' Meeting in Montreal on Monday the 23, and thought I would drop you a line with reference to what I think should be done at this meeting.

I think we should come out at this meeting with our definite policy for the first of July and my thoughts on this are that I think the early order discount should definitely come off and list prices should go up 5%. . . . I feel it is up to this industry to get back to a profitable basis as soon as possible.

One of my chief reasons for this is England has put in a controller of rubber. . . . In a few conversations I had in Ottawa recently, I gathered that Ottawa will follow this same principle, and from what I am given to understand, if they do this, they will not allow any crude rubber to any manufacturers who are not showing a profit.

. . .

Therefore, I would like to see ourselves getting into a better position before we are told by Ottawa what we have to do.

I do not know what your thoughts are in regard to the future of the footwear industry, as I have not seen you to have a talk for some time, but from what I know of the other companies this year, I feel they are all trying to do a really good job and keeping to the set-up which the majority of us have agreed to, . . ."

(Exhibit 424)

A. R. Kaufman replied on June 18:

"I have your letter of the 16th and note contents. I am not prepared to say at present what we are willing to do after July 1st as this will depend on circumstances. We have announced that our placing season closes on June 30th but will wait until after this date to see whether the same applies to others. I have learned over a period of years that actions speak louder than words.

I might make the observation that this is the first year that competitors have not cut our prices - so far. Last year our low placing prices were observed fairly well for a short time, but we were later considerably embarrassed by competitors' special discounts and especially by the continuance of the 10% E.O.D. which we had withdrawn at the end of placing and did not reinstate. I do not know how much higher prices can go without someone being again unwisely tempted to offer special discounts. In any event there is plenty of time to decide sorting prices."

(Exhibit 423)

No minutes were obtained of a meeting held on June 23, 1941 but on June 24, 1941 Mr. Miner wrote to Mr. Kaufman in part as follows:

"I received your letter of the 18th and I am returning same as per the memo attached.

I might state that we wired our branches yesterday that present prices would be withdrawn on June 30 and that they would get a new list in the course of a few days. I might state briefly that we intend to put prices up, 5% on the ones we advanced 5% in the Spring and 10% on the ones we did not advance. . . .

. . .

I will be pleased to send you a copy of our new prices and terms as soon as we issue them.

Also would you kindly return the letter I wrote you on the 16th, as in looking it over there are one or two paragraphs that it would be better not to have on record."

(Exhibit 425)

Effective December 1, 1941 the maximum prices of each rubber footwear company were frozen at the highest levels in effect during the "basic period" of September 15 to October 11, 1941. Discounts and terms and conditions of sale were embraced by the price ceiling order. Thus, the prices in effect during the basic period became, except for certain revisions allowed by the Wartime Prices and Trade Board, the permitted ceiling prices until the end of price controls in April 1947.

A. R. Kaufman, the President and General Manager of Kaufman, was asked about the situation in respect of list prices and discounts at the time when controls were imposed. Speaking from the best of his recollection, he said:

"Q. List prices and discounts of common products.

A. With the exception of one or two, or perhaps three companies, I think they were alike."

(Evidence p. 448)

In giving evidence about Exhibit 129 (see page 438) T. Y. O'Neill said:

"Q. At this time in April of 1941, was there any agreement amongst the manufacturers of rubber footwear in Canada with respect to prices?

A. Well, we were in touch with each other regarding prices, but I feel that during that time, it was a highly competitive period and I know that prices were not the same or on the same basis for different companies; that there were list prices and, naturally, those would be the same because that had been the custom, following one another in order to be competitive. And then ---"

(Evidence p. 1044)

Actual net prices charged by the Companies were different to the extent that confidential price concessions to certain accounts were still being granted. But such concessions were not incorporated into controls and the companies were not required to continue granting them.

According to the oral evidence the list prices and discounts for Acton products were the same as those of the majority of the Companies except that they were in some cases subject to an additional 5 per cent or more discount which, because of the manner in which it had been granted, did not have to be continued under controls. Kaufman's list prices were apparently the same as those of the majority of the Companies but Kaufman's net prices differed in at least two respects: Kaufman was granting an extra 2 per cent cash discount and it classified certain accounts more favourably than did the other companies. Kaufman was required to maintain these two concessions during controls.

Chapter 3 - The Period During and After Controls

A. Wartime Controls

The nature and extent of wartime price and supply controls affecting rubber products are described in Chapter 3 of Part I of this Report. The manufacture and distribution of rubber footwear was subject to very comprehensive controls and the manufacturers by working in close cooperation with the control authorities and in many respects with each other, were able to supply all essential civilian as well as military needs and thereby made an excellent contribution to the general war effort.

During the control period many of the factors upon which competition rests were for the time being in abeyance. There was rationing of certain raw materials and joint purchasing in the case of some others; there was control of quantity and type of production, interchange of technical information in pursuance of control policies, and demand was strong in relation to supply. The meetings during the control period were taken up to a great extent with matters related to wartime controls and in furtherance of wartime control policies. Other matters looking to the maintaining of common pricing policies during and after controls were also dealt with. Some of the control measures that were of particular significance in respect of rubber footwear will now be mentioned.

It will be remembered that, following the attack upon Pearl Harbour in December 1941 the manufacture of civilian goods from rubber was temporarily stopped, to be resumed early in 1942 under a permit and quota system. Early that year, at the instance of the control authorities, the footwear manufacturers, working through the Association, set up a committee which worked out a simplification of range that reduced the lines and genders being manufactured from about 360 to about 40 or 50. For example, a rubber conservation order issued in November 1942, confirming previous and less formal directions, sets out approximately 40 permissible lines and genders of waterproof rubber footwear and prescribes the proportions of crude and reclaim rubber permitted in their manufacture. As GR-S synthetic became available in quantity, the amount of crude rubber permitted to be used was progressively reduced to about one-eighth of prewar usage. As rubber supply improved, additional lines and a larger crude rubber content were permitted. By May 1946, 73 civilian lines and genders were permitted and colour restrictions were somewhat relaxed. By December 1946 the restriction upon the use of natural rubber was to the effect that no natural latex (liquid) could be used and one-third the total monthly consumption of natural and synthetic rubber must be synthetic. The production of canvas footwear was similarly or more closely regulated. All restrictions on the use of rubber were removed at the beginning of April 1947 but the industry was warned to exercise restraint in the use of natural rubber because of the continuing short supply. This aspect of the matter is described at length in Chapter 4 of Part VIII.

A representative of the Rubber Controller was a regular

attendant at meetings of the Companies during the control period in connection with control matters, e.g. checking upon the progress being made by the industry in meeting its quotas of certain lines of footwear. During this period the Companies also looked to the control authorities for assistance in obtaining materials besides rubber that were in short supply and the meetings were also the occasion for exchanging technical information on problems arising from the use of substitute materials and for other measures of cooperation related to controls.

It will be remembered that the policy of "equitable distribution" which was enforced by the control authorities involved that goods in short supply must be distributed among customers, generally speaking, in the same proportions as in 1941. By November 1945 rubber footwear was among those articles which, under the policy, suppliers could distribute, to the extent of 20 per cent, as they saw fit. The policy ceased to have effect with the lifting of price controls at the beginning of April 1947.

When ceiling prices were frozen as of December 1, 1941 the selling season for waterproof rubber footwear had scarcely opened and many retailers were caught with prices which they had not yet adjusted to the increases in wholesale prices which occurred the previous summer. Early in 1942 the rubber footwear companies applied for increased prices due to increased costs of manufacture. The decision of the control authorities in respect of these problems is set out in the following letter dated May 21, 1942 from J. A. Martin, Deputy Administrator of Rubber and Rubber Products to P. C. Jones of Dominion, Chairman of the Footwear Section of the Rubber Advisory Committee:

"Subject: WATERPROOF FOOTWEAR (RUBBER)"

There has been a very extended study of footwear prices. The decision now is that no general adjustment of retail prices, however desirable, can be approved. Certain of the retailers have been caught with low ceilings, but ceiling prices must be maintained. Each manufacturer will be expected to continue to supply his retail outlets at a price appropriate to their individual ceilings. To enable the retailers to maintain their ceiling prices, it will be necessary for the manufacturer and their outlets to adjust prices individually by voluntary arrangement where necessary.

Manufacturers are permitted to modify certain of the discounts hitherto granted to large wholesale and retail accounts.

. . .

Briefly, the decision is as follows:

- (1) There will be no general levelling or adjustment of consumer prices on waterproof footwear.
- (2) Manufacturers' list prices will remain the same as those issued in July, 1941.
- (3) Manufacturers may adjust their discount schedule as follows:

The regular 5% discount from the manufacturers' list will be continued to the unclassified accounts.

Accounts purchasing in the season --

from \$500.00 to \$999.00	-- 1½% additional to above (no change)
from \$1000.00 to \$2499.00	-- 2% additional to above (was 3½%)

Classified accounts will receive the following discounts from manufacturers' lists --

A1 -- 14%	(changed from 15% and 2%)
A2 -- 13%	(" " 15% and 1%)
A -- 12%	(" " 15%)
B -- 11%	(" " 14%)
C -- 10%	(" " 12%)
E -- 9%	(" " 11%)
G -- 8½%	(" " 10%)
H -- 7½%	(" " 9%)

Manufacturers may reduce the wholesalers' discount from 18½% plus 5% to 16% plus 5%.

Lines permitted for manufacture will be changed as follows:

Auto Boot, fur trimmed, Women's only, may be added to the line of permitted manufacture to use materials on hand or commitments which can not be cancelled. It should be noted that this line is to be discontinued as soon as possible and replaced by a less expensive shoe such as a 3-buckle.

The two Romper items, Misses' and Child's, will be dropped, no price having been set on them.

On account of the restricted supply, it is necessary to guard against a serious shortage in the more essential items. It will be the duty of the manufacturer to take care of the most essential lines first, and we ask that a proposal be presented to take care of this distribution."

(Exhibit 91b, c)

Upon the cessation of price controls on April 2, 1947 the Rubber Controller sought and obtained from the rubber footwear companies an undertaking that they would not increase their prices for a period of three months.

B. Post-War Planning

Certain of the rubber footwear companies between 1943 and 1947 made plans directed toward the period when controls would be lifted and the first result of such plans was a common policy relating to the waterproof program for 1947.

Some time between November 11, 1943 and August 16, 1944 a Post-war Planning Committee was set up by the Footwear Division of the Association. It included representatives of Miner, Dominion, Goodrich and Kaufman. The first meeting of the Committee was held in Montreal on August 16-17, 1944 with T. Y. O'Neill of Miner acting as Chairman. Other meetings were held on September 20, 1944, October 18, 1944, December 8, 1944 and March 1, 1945 (Exhibits 361, 364, 198). This Committee drew up a comprehensive program for submission to the rubber footwear companies as a program for joint action after the lifting of controls. It included a standard waterproof range and rules to govern specialties, a structure of volume discounts based on cumulative sales by all the Companies to direct accounts, credit terms and payment dates, jobber classifications and discounts, conditions of freight prepayment and many other incidental matters. Prices themselves could not, of course, be determined in advance of decontrol. This program was not novel. Many of its features then were, had been in the past and continued in the future to be matters of agreement among the Companies. The evidence fails to disclose however that it was formally adopted at any one time as was the less comprehensive program now to be referred to.

On May 2, 1946 a meeting of sales managers was held at which Acton, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock were represented. The range and program as recommended by the Post-War Planning Committee was adopted. The minutes read in part:

"Post-War Planning Committee: Mr. O'Neill reported that the Post-War Planning Committee had met and drawn up a proposed range of waterproof footwear to be adopted by the industry (1) when production controls are removed and (2) when price controls are removed. (See copy attached, which is revised as agreed at this meeting.) He explained that an effort had been made to keep the range down to an economic length, without placing undue restrictions on the initiative of the various companies.

. . .

The companies present then unanimously indicated acceptance of the proposed ranges and control programme as revised (see attached).

Mr. O'Neill stated that in due course the Post-War Planning Committee would submit proposals for industry co-operation in other aspects of footwear merchandising and indicated that the Committee would welcome suggestions from all companies at any time."

(Exhibit 936)

The "control programme" was supplementary to the range and dealt with the same matters that are contained in the "program" referred to on page 453.

British refused to participate in the plans and this caused some concern. Apparently the plans were submitted again to a meeting held in June. C.M. Mather, Sales Manager of the Footwear Division of Gutta Percha wrote to J. R. Belton, Vice-President, on August 13, 1946 in part as follows:

"The Post-War Planning Committee have submitted to the Industry a program of control covering staple Rubber Footwear. At the Sales Managers' Meeting (June 6, 1946), all companies with the exception of British Rubber Co., Ltd., agreed to adopt this program. Mr. Gallop (of British) reserved their decision until the next meeting; Mr. Gallop was not present at the July 4th, 1946, or August 2nd, 1946, meeting."

(Exhibit 12)

The Companies decided to carry on with their plans in spite of the refusal of British to co-operate. By October 1946 the industry was fairly sure that controls would cease sometime in 1947 and it became possible to set a date for the implementation of the Post-War Plan. The minutes of a meeting of sales managers held on October 3, 1946 at which were represented Acton, Dominion, Goodrich, Gutta Percha, Kaufman and Miner read in part:

"It was recommended that the post-controls waterproof range plan would go into effect at the opening of the 1947 placing season, not at Jan 1st, 1947. It was suggested, also, that all companies review the post-controls waterproof range thoroughly in preparation for discussion with a view to making any changes that may seem desirable at the next meeting.

All companies represented at the meeting expressed approval of the recommendations made by the Post-war Committee and agreed that by operating as a group the companies could meet outside competition better than by independent action. It was emphasized again that the post-controls plan leaves each company latitude to deal with its individual problems in its own way."

(Exhibit 205)

The "outside competition" evidently included British and Bata.

While the footwear meetings referred to above were on the sales manager level, there is evidence that the activities of the sales managers were supported by the general managers. At a dinner held on February 6, 1947 at which were represented all rubber footwear manufacturers, the following resolution was passed:

". . .

'RESOLVED that, as we are on the eve of dissolution of Rubber Control, a meeting of General Managers and/or Presidents of rubber footwear companies be held in the near future to support the Sales Managers in their efforts to conduct the business of the industry on a sound basis now and in the future.'

". . ."

(Exhibit 72b)

On February 13, 1947 C. M. Mather, Sales Manager of the Footwear Division of Gutta Percha, wrote a long-hand memorandum to J. R. Belton, Vice-President, with respect to the above resolution:

"Re suggested meeting of G.M.'s Footwear

At the present time, the Footwear Sales Managers are working in agreement, and there does not seem to be anything coming up, which should interfere with the continuance of good relations.

As you know The British Rubber Co. have not attended any meetings since last June, and we all assume they have withdrawn from any of our arrangements, though they were represented at the T.Y. O'Neill dinner last week.

". . . I consider it is in the best interests of G.P. (Gutta Percha) to continue a working arrangement with the other companies, and think that Mr. Miner's desire to hold a meeting of the G.M.'s (General Managers) is a good one.

Not with any thought that the G.M.'s should get involved in the details entailed in carrying on a satisfactory arrangement, but more with the idea that they should strengthen the hands of the Sales Managers, by expressing the conviction that by working together the best interests of the Industry and individual companies can be served."

(Exhibit 72c)

On February 14, 1947 Mr. Mather again wrote, in long-hand, to Mr. Belton who had requested information for the purpose apparently of his attendance at the general managers' meeting which was in contemplation:

"Further to our conversation re G.M.'s meeting. We are bound by arrangement to the following agreement and would not feel free to change any of the items listed below without considering we had broken faith with the other companies.

List Prices.

Classified Lists, and discounts applying to same.

Trade discount of 5% applying to unclassified lists. Bonus for volume
Jobbers List.
Jobbers Discounts
Jobbers Discounts to those Jobbers who have controlled accounts.
Commission Jobbers Discounts
Terms Dating, prepayment, and service charges.
Freight. Express and Truck Shipments.
Prepay points
Staple Lines to be manufactured, and in some cases constructions
Dominion and Provincial Government discounts on ordinary requirements,
but Tenders from Dominion Government for large lots, prices are
not agreed on."

(Exhibit 72d)

J. R. Belton, then the President and General Manager of Gutta Percha, in his oral evidence ascribed the agreements referred to in Exhibit 72d to Rubber Control:

"Only an agreement with the rubber controller. We were absolutely under control."

(Evidence p. 178)

He was unable, however, to explain the interest of the control authorities in such agreements. C.M. Mather ascribed the same character to some, at least, of such agreements: "We were in agreement under rubber control" (Evidence p. 303). Mr. Mather did not explain either what was the interest of the control authorities in the agreements referred to in Exhibit 72d. He referred to the letter of May 21, 1942 from J. A. Martin as Deputy Administrator of Rubber and Rubber Products to P. C. Jones of Dominion as Chairman of the Footwear Section of the Rubber Advisory Committee (Exhibit 91b,c) which is set out at page 445. To the Gutta Percha copy of this letter was attached the following long-hand note of Mr. Belton's:

"C.M.

Have you a copy of this? This letter seems to be our authority, under war conditions at least, to have the same program throughout the industry."

(Exhibit 91a)

On February 27, 1947 a meeting of presidents and general managers was held and was attended by representatives of all the Companies, including British but excluding Bata, and the following resolution was passed:

" . . .

- (1) 'RESOLVED that the General Managers of rubber footwear companies have complete confidence in their Sales Managers. They appreciate and approve the work so far done by the Sales Managers and wish them to continue to meet regularly and to carry on their co-operative efforts to conduct footwear business on a sound basis in the future.'

. . ."

(Exhibit 66b)

The following appears in the same minutes:

" . . .

. . . . Mr. Miner (President of Miner) . . . expressed the emphatic opinion that the industry must work together in the future as it had during and because of Rubber Control, if the losses prevalent in the pre-war period were to be avoided. This raised a question of to what extent the industry could work together without falling foul of the Combines Investigation Act, and he suggested that the industry appoint a committee to interview Mr. F. A. McGregor, the Commissioner of the Combines Investigation Branch in this connection. . .

. . . "

(Exhibit 66a)

The discussions in the industry relating to the Combines Investigation Commission are more fully described in Chapter 3 of Part VIII.

The minutes of a sales managers' meeting of March 6, 1947 contain the following item:

"MINUTES OF GENERAL MANAGERS' MEETING, FEBRUARY 27TH: The meeting reviewed and discussed thoroughly the minutes of the meeting of Footwear Presidents and General Managers held on February 27th, 1947."

(Exhibit 207)

The other paragraphs of the minutes of March 6 indicate that the sales managers understood that the approval of the general managers was directed to the arrangements which the sales managers had been making and expected to continue to make for joint action on the part of the Companies engaged in the manufacture and distribution of footwear. At this meeting it was agreed that the Post-War Planning Committee should continue to function "as the industry's fact-finding and advisory body with representatives, as previously, from Dominion, Goodrich, Kaufman and Miner. Specifically, it shall consist of Messrs. A. J. Minister (Chairman), C. B. Parsons, C. D. Pequegnat, W. G. Simpson and J. C. Mills (Secretary)." The minutes conclude with this item:

"REVIEW OF CLASSIFIED ACCOUNTS LIST: It was agreed that nothing can be done about revision of the Classified Accounts List while footwear remains subject to price control."

(Exhibit 207)

C. Implementation of the Post-War Plan

On April 2, 1947 all price and production controls over the rubber footwear industry were suspended by the Government. Each company became free to decide for itself what to produce and, except for an assurance to the Government that prices would not be increased for three months, became free to set its own prices. It was felt, however, to be in the interests both of the industry and of the nation to continue to exercise some control over the overall ratio of synthetic to natural rubber used. A thank-you

letter of March 25, 1947 from the Rubber Controller and Rubber Administrator and his deputies to the secretary of the Rubber Advisory Committee, advising of the imminent cessation of Government control over the use of natural rubber stated in part:

"Government control over the purchasing and importing of crude natural rubber and natural latex ended November 14th, 1946. Government control over the use of crude natural rubber and natural latex ends March 31st, 1947. There will, therefore, be no rubber control by the Government as to purchasing, importing and using natural or synthetic rubbers, or latices thereof, after March 31st, 1947.

While there will be no Government control of the usage, we warn Industry to be very careful for some time yet. Before increasing the poundage of crude rubber or natural latex used at present in any article, as allowed by current R.C. orders, serious thought should be given to the general supply situation.

At present, Canada is using about 40% natural rubber of the total natural and synthetic rubber consumed. Before 1947 ends, the supply may improve so as to allow about 55% natural rubber overall, if desired. This percentage varies greatly in the many items of manufacture affected. Natural latex supply is worse than the crude rubber supply and will take longer to right itself.

If any individual or company starts to use natural rubber or natural latex without consideration of the above facts, a very bad situation may be created both as to supply and price, damaging to the industry as a whole and eventually to the individual starting the trouble. A little thought and care by each one should prevent any difficulty in this respect.

If industry will show the same spirit of cooperation and foresight as exhibited during the war and the period of acute shortages since the war, this problem will not be too difficult. This is the thought we would leave with you at the end of Government Rubber Control."

(Exhibit 782)

In order to control the natural-synthetic ratio J. A. Martin, at one time an official of Dominion and who was now relinquishing his duties as Rubber Controller and Rubber Administrator, was employed by the Association and he set up and administered voluntary industry control in this respect. This was designed to ensure the use of enough synthetic rubber to forestall any shortages of natural rubber and to keep Polymer Corporation, the sole producer in Canada of synthetic rubber, in operation. The story of voluntary rubber control as it affected Polymer is contained in Chapter 4 of Part VIII.

In March 1947, just before decontrol, final plans for the implementation of the Post-War Plan were made. On March 19, 1947 G. B. Smith sent a circular to representatives of all the Companies except British and he also sent a copy to W. J. Fawcett of Rubber Control. He wrote:

"The next meeting of the footwear group will be held in Montreal on Thursday, April 10th at 10.00 A.M., in the Mount Royal Hotel. . . .

It is now practically a year since the Post-War Planning Committee submitted to you their recommendations for a Post-War Merchandising Program and waterproof footwear range. Since that time both the program and the range have been amended at numerous meetings and in order to avoid any possibility of confusion, I felt it advisable to try to draft an up-to-date program and range incorporating all amendments and revisions to date. I attach a copy of this draft to this letter and shall place this subject on the agenda for the next meeting."

(Exhibit 202a)

The meeting of April 10, 1947 was duly held and Acton, Goodrich, Cambridge, Dominion, Gutta Percha, Kaufman, Miner and Northern-Woodstock were represented. British and Bata did not attend. The minutes read in part:

"1947 WATERPROOF RANGE AND PROGRAM: The consolidation of the 1947 Waterproof Range and Program sent out by the Secretary on March 19th was reviewed.

It was noted that on Page 2, Lumbermen, the note 'Brown Foxing and Top Bind Optional' should apply only to Classes 303 and 304, not to Class 302. With these changes, the consolidation was approved."

(Exhibit 191)

The "Program" as sent out by G. B. Smith on March 19 and approved at the April 10 meeting reads as follows:

"WATERPROOF AND CANVAS FOOTWEAR MERCHANDISING PROGRAM 1947

FOOTWEAR STANDARD RANGE:

The Standard Range of Waterproof Footwear for 1947 is listed in the attached schedule.

SPECIAL BRANDS:

If companies find it necessary to supply more than one brand of footwear, they should be limited to items in the Standard Range only.

SPECIALTY LINES:

Companies wishing to manufacture specialty lines of footwear in addition to the Standard Range, may do so under the following conditions:

- (1) Specialty lines must have some unique or exclusive features not found in the Standard Range.
- (2) Colour or height variations of lines in the Standard Range shall not be considered as specialty lines.
- (3) Specialty lines should be sold at higher price levels than standard lines, but the prices may be either net or list subject to discount. They should return a better gross margin than that obtained on standard lines. Net prices should show a minimum mark-up of 55% over factory costs, and list prices a minimum mark-up of 73%. Prices so calculated should be inclusive of sales tax and transportation charges on the same terms as applies to the standard range. The usual maximum discount of 10% for seconds should apply to specialties sold at either net or list prices.
- (4) Specialty lines should be sold by retailers at suggested minimum resale prices, such prices to show a minimum of 37½% margin on selling, or a 60% mark-up on cost.
- (5) Specialty lines should be sold on a made-to-order basis only, not to be stocked at branches or jobbers, except as cleared with the Secretary of the Rubber Association for general discussion at a meeting.

LABELS:

Company brand labels should not be put on standard lines as long as price controls remain in effect, but may be put on specialty lines.

SPECIAL LABELLING OR MARKING:

There should be no special labelling or marking for ordinary retail selling. Where special marking is required to establish ownership by Municipalities, Federal or Provincial Governments, large industrial accounts, or Public Utilities, it should be cleared with the industry prior to commitment. An appropriate surcharge should be made in each case."

(Exhibit 202b)

This document indicates the inter-relationship between the standard and the specialty range. The industry could not arrive at an effective agreement respecting the one without controlling the other. Without some form of such control, any company might introduce specialties only slightly different from standard lines and so circumvent the agreement.

At the same time, it would be impracticable to try to bar any one manufacturer from attempting to market novel and individual styles of rubber footwear. The "Program" reproduced above therefore laid down rules that would prevent manufacturers from producing specialties that were not significantly different from anything in the standard range. Also, it laid down general rules with respect to pricing and distribution of specialties which would, among other things, prevent the use of specialties in competition with the standard range.

The 1947 "Waterproof Range as agreed upon at the meeting of April 10 was attached to the "Program" (Exhibit 202c, d, e). It did not differ very much from the 1946 range and no price changes were made at the April 10 meeting. British does not appear to have made any significant price changes in 1947 after the end of controls but British and Bata, not being parties to the agreement on range and program, remained free to add to their respective ranges as they saw fit.

D. Oral Evidence

In oral evidence it was indicated by a number of witnesses that the waterproof range had been agreed upon. It was stated that the purpose of this was to avert the danger of a too-rapid expansion of the range while raw materials were still in short supply as many, besides rubber, undoubtedly were. It was also stated that a purpose was to try to avoid a return to the unnecessarily diversified range that had existed in the pre-control period. With respect to the "Program" it was generally stated that this part of the post-war planning had never been implemented or even agreed upon - that it had never gotten beyond the planning stage.

E. Post-Control List Prices

(a) Prices on Decontrol

There was no general revision of rubber footwear prices from decontrol until the latter half of 1948. There is evidence, however, of meetings, of price discussions, of common action in respect of the prices of new lines and of actual uniformity in prices. Such evidence, taken with the evidence of agreement upon customer classification and discounts which is referred to in later sections makes it clear that the majority of the Companies had agreed upon a common pricing structure.

On March 25, 1947 just prior to decontrol there had been a general upward adjustment in the prices of both waterproof and canvas footwear brought about by the decrease in the subsidy on cotton and made possible by the Wartime Prices and Trade Board raising the price ceilings.

When price controls were lifted at the beginning of April 1947, prices were substantially identical for the canvas and waterproof

footwear of Acton, Dominion, Goodrich, Gutta Percha, Liner and Northern-Woodstock. The list prices of Kaufman and Cambridge were substantially the same as the others but Kaufman's discounts were somewhat different and Cambridge had a different system of customer classification, which resulted in different net prices.

When controls were suspended J. A. Martin attended a directors' meeting of the Association on March 31, 1947 and sought assurances that prices would not be raised for three months. The Companies represented at that meeting gave such assurances and the secretary of the Association was instructed to write the Companies not represented at the meeting for similar assurances. The Commission has not received a copy of this letter but on April 16, 1947 A. R. Kaufman, President of Kaufman which was not represented at the directors' meeting, wrote to the Association as follows:

". . .

Re: Decontrol of Rubber Footwear Prices.

We have your letter of April 2nd. We will continue present prices until mutually agreed otherwise, except that we will withdraw our 2% cash discount which has not been given by our competitors for some years.

". . ."

(Exhibit 141)

With reference to the above letter Mr. Kaufman said in evidence:

"Q. . . . Now, leaving out that last sentence with reference to the 2 per cent cash discount which you have explained to us, will you explain to me what you had in mind by the statement, 'We will continue present prices until mutually agreed otherwise;' just elaborate on that as much as you will, please.

A. I do not recall it now, but interpreting what I see, it means that we would continue the existing prices until we told them otherwise.

Q. Until you told whom otherwise?

A. Some of the rubber companies.

". . .

Q. . . . The phrase is 'We will continue until mutually agreed otherwise'. I am asking you this question, when you wrote the words 'mutually agreed otherwise', with whom did you contemplate making an agreement? Was it Canadian Goodrich, Gutta Percha, Dominion Rubber, Northern Rubber and Liner Rubber?

A. Yes, I would say those and likely no more.

Q. Were such agreements, in fact, made after this letter was written?

A. I do not think they were.

. . .

Q. . . . Was there, subsequent to the writing of the letter of April 16, any agreement made between your company and all or any of the other companies I have last mentioned to you, as to prices?

A. There was no formality of an agreement.

Q. I did not ask you about formality, I simply said, was there or was there not an agreement or agreements?

MR. PICKUP: Could he not finish his answer?

BY MR. FHELAN:

Q. I think I am entitled to an answer to that very simple question?

A. A binding agreement? If you are trying to express that to me, my answer is No.

. . .

Q. Where were the meetings held?

A. I think the places varied.

Q. At the Rubber Association offices?

A. They might have been.

Q. Would your company be represented at those meetings?

A. I think most of the time.

Q. What agreement was reached at those meetings or what understanding? Use your own words, whatever words you like to express what conclusion was arrived at?

A. There was an understanding, before I left, in accordance with list prices and discounts.

Q. What understanding, be specific about it?

A. List prices on footwear.

Q. An understanding was arrived at. What about list prices? What was to be observed in connection with list prices?

A. The issuing of price lists or the issuing of list prices and discounts.

Q. Which all the companies present would observe?

A. I expect they did, but I do not just recall what they did.

Q. Was the intention, that they should observe them?

A. Yes.

Q. That was the intention, was it?

A. We knew it did not work 100 per cent; any intention was probably modified by experience.

Q. Was that the intention of the discussion?

A. To the extent we thought it would have.

Q. How frequently would these agreements or understandings be arrived at after this letter of April 1947? How many of these meetings did you have?

A. I do not know that.

. . .

Q. What would you estimate it at?

A. Six or eight."

(Evidence pp. 453-59)

Mr. Kaufman gave his evidence in October 1948. He had not himself attended meetings in recent years but had received reports from his general sales manager who attended.

(b) Canvas Prices for 1948

The evidence indicates that during the summer of 1947 preparations were made toward the discussion of canvas prices although these steps did not lead to a general change in prices. In the minutes of a meeting of sales managers on May 8, 1947 the following appears under the heading "Canvas Footwear Range for 1948":

". . .

5. A serious study of costs on canvas footwear should be made in preparation for next meeting.

. . ."

(Exhibit 300)

The minutes of a sales managers' meeting on July 3, 1947 attended by representatives of Acton, Bata, Cambridge, Dominion, Goodrich, Gutta Percha, Miner and Northern-Woodstock, read in part:

"CANVAS FOOTWEAR COSTS: In connection with an enquiry as to what crude rubber costs should be used in making out canvas footwear costs, it was agreed that crude should be taken at 16 $\frac{1}{2}$ a pound for No. 1 Ribbed Smoked Sheets, with a normal differential for cheaper grades. Where possible, the new labour rates should be taken into consideration in working out the costs."

(Exhibit 770)

Finally, on August 7-8, 1947 there was a sales managers' meeting attended by Acton, Bata, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock. The canvas footwear range for 1948 was discussed but prices are not specifically mentioned in the minutes (Exhibit 832). According to oral testimony Dominion refused to discuss prices at that meeting; shortly thereafter, they announced prices and the other companies followed suit.

C. D. Pequegnat, General Sales Manager of Kaufman, said in evidence:

"A. The prices were adopted on September 1st, 1947 and they were the prices of the Dominion Rubber Company. We adopted them. . . ."

(Evidence p. 559)

An examination of the Canvas price lists issued in September 1947 for the products of Goodrich, Northern-Woodstock, Miner, Acton, Dominion, Gutta Percha and Kaufman reveals that there was no general change in prices at that time and they were substantially identical for standard lines.

(c) Waterproof Prices for 1948

When the 1948 Waterproof Range was announced in March 1948 there was again no general price revision. However, the evidence indicates that prices had been discussed and common action taken. No minutes of these meetings have been found but the facts appear from other evidence.

The following letter was written on December 1, 1947 by P. H. Charest to Acton, "Attention Mr. A. Gagnon". Mr. Charest was in charge of the Rubber Sales Division of Alfred Lambert and was "relations man" between the two companies. André Gagnon was the local manager of Acton. The letter reads (translated from the original French):

"Regarding the Rubber meeting at Toronto for December 4 next, we pass along certain information so that we may be in a position to know what to do about these questions.

Class 100

It was decided at the last meeting that the 'Hip' will come into effect on January 1 next. It would therefore be well to know at what price this line will be sold.

Class 107

Though we have the list price for the 'Stormking' height, we do not seem to have the price for the knee length. Would you please find out what list price will apply to this height.

. . .

We hope you will attend to these questions and see that we get a report after the meeting."

(Exhibit 474)

No minutes were obtained of any meeting held on December 4. The minutes of the sales managers' meeting on October 9, 1947 contain the following:

" . . .

1948 WATERPROOF RANGE: Changes to be made in the waterproof range for 1948 were discussed with the following results:

. . .

Boots:

Class 100 Hip - Add to standard range.
Class 107 - Short and Stormking - Add to standard range

. . ."

(Exhibit 476)

The minutes of the sales managers' meeting held on November 6, 1947 contain the following:

" . . .

1948 WATERPROOF RANGE: The meeting again reviewed the 1948 waterproof range as discussed at the previous meeting with the following results:-

Boots

Class 100 Hip:- Confirmed that this be added to the range effective January 1, 1948.

. . .

Class 107:- Confirmed that short and stormking boots be added to standard range effective January 1, 1948, in the case of the short boot only.

. . ."

(Exhibit 475)

These minutes indicate that A. Gagnon attended both meetings.

In his evidence before the Commission Mr. Charest said in regard to this incident:

"THE WITNESS: All I can say on this is that I did not attend the meeting of November 6th. Knowing that there was another meeting on December 4th, I wrote to Mr. Gagnon and asked him to try to get the information as to what price the hip boots were sold. He could no doubt get this information verbally from anyone there.

BY THE DEPUTY COMMISSIONER:

- Q. Does it mean that you anticipated the price of this item would be discussed at the meeting?
- A. No, not that. I had in mind to try and get the price of this line if we wanted to add it to our line that we could do it. No discussion, it is a matter of questioning a friend there, I would say even outside the meeting.
- Q. It would be an occasion when you might meet members from the other companies?
- A. That is right.
- Q. Would there be any particular person from whom you would expect Mr. Gagnon to get that information?
- A. No, and if I remember correctly, I think he forgot to bring it back and when he got back I telephoned Dominion Rubber myself to get the list price and I could not get the people I wanted to speak to so I got it from a retail store.
- Q. In fact, Mr. Gagnon did not get the information?
- A. Did not get the information. I suppose he forgot about it.

BY MR. DALEY:

- Q. You got it finally from a retail store?
- A. From a retail store, yes."

(Evidence pp. 1646-7)

Mr. Charest's letter to Mr. Gagnon is also discussed with reference to another matter it contains, on page 483.

A letter, written by Mr. Charest on March 5, 1948 (Exhibit 467) refers to an "interview" with the "other Rubber Footwear Company Managers" during "this week." Another letter written by Mr. Charest on March 3, 1948

to Acton, to the attention of Mr. Desjardins, Mr. Gagnon's assistant, shows that there was a meeting on March 2 at which prices were dealt with. The following is an excerpt from this letter with some later corrections, indicated by Mr. Charest, incorporated (translated from the original French):

"In consequence of our meeting held yesterday in Montreal it has been decided that the next rubber and tennis price lists will not be changed. You undoubtedly know the chief reasons and it seems that so long as that situation exists our prices cannot be increased, at least without exposing ourselves to certain difficulties. Nevertheless we were able to get the prices of the new lines and list them for you as follows:

No. 1958	- price east	\$7.55	- west	\$7.93
2058	- ... price east	\$2.97	- west	\$3.12
1149	- ... price east	\$4.22	- west	\$4.43
3126	- price east	\$4.87	- west	\$5.11
2100	- price east	\$3.80	- west	\$3.99
2593	- price east	\$4.38	- west	\$4.60
2592	- price east	\$4.15	- west	\$4.36
921	- price east	\$2.28	- west	\$2.39
721	- price east	\$1.93	- west	\$2.03
821	- price east	\$1.81	- west	\$1.90
20	- price east	\$1.53	- west	\$1.61

A quotation was also furnished for the first quality 'Sorel' lines. While these are not made by us, we give you these prices just the same:

For men	- price east	\$2.54	- west	\$2.67
For boys	- price east	\$2.17	- west	\$2.28

..."

(Exhibit 468 A, B)

When Mr. Charest gave evidence there was considerable discussion as to the nature of the meeting referred to, including the following question and answer:

"Q. Then, returning to this Exhibit 468(b), having now thought a little more about meetings which you have attended during the past year, are you able to say any better as to whether this was a meeting of manufacturers, a meeting with other manufacturers?

A. I think so, but I am not so sure about it."

(Evidence p. 1662)

That a meeting of the Companies was held in Montreal on March 2 is also indicated by Exhibit 633 which is referred to at page 510.

Shortly after March 2, the date of the meeting, annual Waterproof price lists, effective on dates ranging from March 8 to March 22, were issued for the products of Dominion, Goodrich, Miner, Kaufman, Acton and Gutta Percha.

These price lists incorporate the prices mentioned in Mr. Charest's letter of March 3 (Exhibit 468) with a couple of exceptions where one company is a few cents higher. Northern-Woodstock did not issue a new price list at this time but it amended its current list to include the prices set out in Mr. Charest's letter also.

(d) Price Increases in 1948

The first general waterproof footwear price rise since de-controls occurred in July 1948 and that of canvas in September 1948.

A memorandum dated July 15, 1948 signed by A. Daicar, Sales Manager of Bata, reads in part:

"New price increase is charged on all shipments from factory starting July 12th - all other Companies including British Rubber are increasing their prices - Mr. Parson (Sales Manager, Footwear Division, Dominion Rubber) suggested, that we should put on our increases date July 19th - the reason will explain personally."

(Exhibit 989)

In his evidence before the Commission Mr. Daicar stated:

"Q. I notice you say Mr. Parson suggested you should put your increase on July 19?

A. He didn't actually suggest. He said they are putting on their prices on July 12.

BY THE DEPUTY COMMISSIONER:

Q. It would be in his interest for you to put your increase at a later date than his. Why would you agree to that? I don't follow it. From the point of view of your competitive interest, you would not want to put out your price increase at a later date?

A. We couldn't put it out on July 12 because I was in Montreal for two or three days. We prepared the prices after my return to head office. We took two or three days to prepare them.

Q. To prepare the price list?

A. To prepare the price list and get the information to the trade.

. . .

Q. Mr. Daicar, the prices were increased effective July 19?

A. Yes, July 19, 1948."

(Evidence pp. 3772-74)

At this time new waterproof prices which were predominantly the same were announced for the standard products of Dominion, Northern-Woodstock, Goodrich, Kaufman, Miner, Gutta Percha and Acton. Cambridge's list prices conformed as did also a considerable number of Bata's. In September the seven Companies first mentioned issued price lists for canvas which were also substantially identical. Since British continued to use a net pricing system a comparison of its issued prices with those of the other Companies does not reveal the true relationship of British prices to those of the other manufacturers.

(f) Oral Evidence re List Prices

In oral evidence the identity of list prices was generally conceded but most of the witnesses denied that this was the result of agreement and such identity was explained upon the basis that Dominion was the leader in the field and the other Companies adopted the list prices as announced by Dominion. An official from Miner and one from Dominion stated that, while some of the Companies had attempted to discuss prices at a meeting since decontrols, Dominion had refused to do so and the discussion never came about. Much emphasis was laid upon the "reasonableness" of the prices at which rubber footwear was being sold. It was stated that prices were very low, comparing favourably with those in the United States. Some witnesses, however, gave oral testimony tending to corroborate the documentary and circumstantial evidence of price agreements. A. R. Kaufman, referring to the period from April 1, 1947 to October 1948, said in evidence:

"Q. . . . how did it come about that list prices and discounts were the same?

A. I think one company copied another.

. . .

Q. There were meetings in this particular period I am talking about?

A. I think there were some.

. . .

Q. From the reports which you received (from Mr. Pequegnat), what is your understanding as to the matters which were discussed? . . .

A. My impression of what Mr. Pequegnat did was that prices would be more or less uniform. I was satisfied the list would be more or less uniform because you cannot do anything else. . . . You just cannot do it. Whether you wish to do it or not, even if everybody goes out with a totally different list, in two weeks they are the same. You just cannot help it. Everybody takes the other fellow's low price on that particular shoe.

. . .

Q. Now, am I putting it correctly, when I say your hope was to secure price control in the industry?

A. to the extent that we could make a little profit."

(Evidence pp.449-52)

To a like effect is Mr. Kaufman's evidence which is reproduced on the preceding pages (456 et seq.) of this Report.

J.G. Prout, Vice-President and General Manager of Cambridge, described how the price is set on a new addition to the standard range. He said in evidence:

"BY MR. MARTIN:

Q. I have one further question. You said something about standard lines having been carried over from the control period.

A. Yes, standard lines list prices.

Q. From April 1, 1947?

A. Yes.

Q. What I want to find out is this: can you tell me how any new line is added to the range since then? Is it necessary to obtain approval of the other manufacturers before you add a line to the range -- that is, the standard range?

A. I think it comes as a matter of general discussion. Here is an item, a style trend, we will say -- a change to long dresses, or something like that -- or let us go back to that so-called stadium boot type of thing --

Q. Could you tell me --

A. Coming back to that, that might have started as a specialty, we will say, and it might have developed into a standard line number. The usual way of adding to the standard line is based more or less upon what had been standard line items --

Q. But what I meant was, is it necessary to have the approval of the other companies before having a line added?

A. I will say this, that such and such a number should be added to the standard line. Each company expresses its own opinion. One will say, 'We think it should.' Usually they say, 'As far as I am concerned, you can do it, but I will not make it.' Or another company will say, 'Have you any objection?' If enough of the people feel there is a real demand for the item, it will be added to the standard range.

Q. How is the price set?

A. I think the best way of answering that is, let us take the question of adding this strap pullover boot.

Q. Yes, all right.

A. We had in our line two numbers. One was a plain pullover with no strap, and then we had this so-called Television side zipper type of boot. Now, your standard line prices have been established in that. Now, the company that proposes to add, let us say, this strap construction, offers it and says, 'Now, it cannot sell as high as Television, and its cost certainly makes it necessary to get more money than Brigade.' So your standard line serves a very useful purpose there to measure the true value of any individual number, any new number that comes in; because there are points of similarity and there are some definite differences in the actual basic cost which may be brought out in discussion.

So, somewhere in between those two lines, on a basis of all the limitations on price, by the very nature of the shoe, and its relationship to other numbers in the standard line, plus the factor of cost or the added cost above one, or the lesser cost than another type-- generally the group will arrive at a valuation for that shoe which they consider fair and in relation to other numbers now in their line.

BY MR. DALEY:

Q. Does the company state what it will charge?

A. As a general thing the company proposing will state what his added costs are and what he feels is the price he should charge. Your other companies are given an opportunity to study their costs, if they put it in."

(Evidence pp. 2254-56)

F. Discounts

(a) Classified Accounts

It will be recalled that prior to 1932 the discounts granted by each manufacturer for volume depended, except in the case of some of the largest accounts, upon the volume of purchases made from that manufacturer alone. Under the system established in the Hardy & Badden Agreement such discounts were graded according to the customer's cumulative purchases from all the rubber footwear companies who were parties to the Agreement. The firm of Hardy & Badden collected and distributed the information necessary to make this system work.

After the break-up of the Hardy & Badden Agreement in 1938 Dominion endeavoured to keep the accounts lists up-to-date and their lists were adopted by the other companies insofar as there existed any systematic pattern of discounts at all. Beginning in 1939 the information required for the maintenance of a common classified accounts list system was tabled through the Association. From the date of the imposition of controls in 1941 until April 1947 minimum discounts were frozen, except for the adjustments referred to in Exhibit 91 at page 445. Thus, the discount structure as it existed in April 1947 was a direct descendant of that which had been set up under the Hardy & Badden Agreement in 1932.

During the period from April 1, 1947 until the time of this investigation the common discount structure applied to the products of Acton, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock. The discounts granted to the various classes of customers were substantially as listed below. The different classes were supposed to correspond with the sales volumes indicated, but, due in part, apparently, to lags in reclassification, they did not follow such sales volumes exactly.

<u>Class List</u>	<u>Volume</u>	<u>Total Discount</u>
A 1	Special Class	14%
A 2	Special Class	13
A	\$65,000 and over	12
B	\$35,000-\$65,000	11
C	\$20,000-\$35,000	10
D	Group buyers	8½ (or 8½ and 2)
E	\$15,000-\$20,000	9
F	\$10,000-\$15,000	9
G	\$5,000-\$10,000	8½
H	\$2,500-\$5,000	7½

Smaller accounts were not listed but the following scale of discounts was allowed them on the basis apparently of their purchases from individual companies:

<u>Annual Volume</u>	<u>Total Discount</u>
\$1,000-\$2,499	7%
500- 999	6½
0- 499	5

P. H. Charest said in evidence:

"Q. Did you at that time (August 1947) have an industry list of classified accounts?

A. We had one, yes, to be used as a basic list."

(Evidence p. 1628)

Mr. Charest continued:

"Q. Who makes up this classified account list? (Referring to the Acton list)

A. I prepared the writing, I would say, and then it is copied.

Q. You get the information?

A. We had a basic list there for years.

Q. Where did that basic list come from?

A. I do not know, I presume from the big companies, but I do not know. It was prior to when I was in the organization.

Q. The information you get at some of these sales managers' meetings, helps you keep that list up to date?

A. Exactly." (Evidence pp. 1634-35)

(b) Kaufman Conforms with Industry List

At the time of the imposition of controls the discounts granted by Kaufman were frozen at levels which were different from those of the other manufacturers in some respects; these differences arose during the very competitive period about 1938. Aside from certain accounts which were classified under different discount groups than by the other manufacturers, Kaufman was allowing a 2 per cent cash discount which it was required to continue throughout the controls period.

At the time of decontrol Kaufman took steps to "get into line" with the majority of the other manufacturers. This process of getting into line involved removal of the 2 per cent cash discount and adjustment of discounts to certain accounts to make them conform with those granted by the other Companies. L. H. Dusang of the Kaufman Winnipeg branch wrote to C. D. Pequegnat at head office on May 13, 1947:

"I called on Mr. Bernard, General Manager of Western Grocers, and told him we had discontinued all Cash discounts, and that they would now receive only their class discount of $8\frac{1}{2}\%$ and a 2% rebate at the end of each month. Mr. Bernard said that if we could not make other arrangements, to at least pay them 4% for collection charges etc. They wanted to discontinue this agreement at once.

He said he had planned on more discount to make it worth their while, and when he discussed this subject with me about six months ago, we told him at that time that no changes would be made in Trade discount until we got back to normal business and all companies set up Trade discounts for everyone. He said that had satisfied him for the time being, but that Western Grocers would not continue on a 2% Bonus arrangement only, and if we could not give them a better deal, to stop all invoices going to them. I told him I would take it up with you and let him know as soon as I had your reply."

(Exhibit 157f)

On May 19, 1947 C. D. Pequegnat, General Sales Manager of Kaufman replied to Mr. Dusang in part:

"Our removal of 2% cash terms on April 1/47 put us on even selling terms with all rubber footwear manufacturers. As you know through a technicality the W.P.T.B. forced us to give the 2% cash dating all through the war when our competitors' terms were net."

(Exhibit 157d)

The minutes of a meeting of sales managers, at which Kaufman was represented by C. D. Pequegnat, held on May 8, 1947 read in part:

"CLASSIFIED ACCOUNTS: Mention was made of the fact that in a number of instances Kaufman's discounts to accounts differ from those shown in the Classified Accounts List. It was agreed an effort should be made to clear this up before canvas placing."

(Exhibit 300)

C. D. Pequegnat wrote to P. H. Charest on August 22, 1947 in part as follows:

"As you know, we are reviewing our industry list of classified accounts, and want to get in line commencing with the canvas season. There are some accounts that we have classified whose basic period purchases entitle them to classification. In these cases we intend to table them with the industry so that all other companies can add them to their lists. Until that time, I believe it was understood a few meetings ago that all companies would adhere to the present industry classification of accounts. It was also understood that we would check our list, and bring it into line with the industry list of classifications."

(Exhibit 485)

Referring to this letter Mr. Pequegnat said in evidence:

"Q. . . . What do you mean by that, 'want to get in line'?

A. We had, as I said yesterday, when prices were frozen, I think we had a different list of classified accounts than the other companies did. We were frozen, and, of course, some accounts were on the list that, perhaps, were not in the right class. We did not want to be an upsetting factor with the other companies in price-cutting."

(Evidence p. 533)

On June 12, 1947 Mr. Pequegnat wrote to Kaufman's Montreal branch regarding the account of George St. Germain:

". . .

. . . The correct way to handle a jobber who operates a retail store is to allow the jobber 16% and 5% on his actual jobbing sales and on sales made to his retail outlets, he should only be allowed the

class discount to which his retail volume entitles him. Our arrangement really is wrong as he is getting a 14% discount on his own retail purchases and when we open up the season 1948, we will have to line up with other companies and sell him according to terms set up by the industry.

. . ."

(Exhibit 151)

On July 30, 1947 Mr. Pequegnat wrote to C.M. Mather, Sales Manager of the Footwear Division of Gutta Percha, regarding an account:

"We have been selling this account for quite a few years and our discount to them is the regular 5% trade. We have not at any time given Mr. Roberge any discount in excess of the 5% and the information Mr. Doig has received is erroneous.

"We are reviewing our classified list with that of the B.F. Goodrich and hope to bring our list in line with all companies during the utility canvas footwear placing season."

(Exhibit 13)

In another letter to Mr. Mather dated August 15, 1947 Mr. Pequegnat said:

"Do not hesitate to write us any time about any matter, particularly where there is a possibility of our deviation from agreed practice.

Alexandria Outfitters, Alexandria, have been on our 7½% list since prior to the war, and is in the group in which we are going to adjust with the opening of our utility canvas footwear placing season."

(Exhibit 14)

(c) Bata Adopts the Discount Structure

On January 2, 1948 Bata adopted the discount structure used by the manufacturers named above. C.K. Herz, Vice-President and General Manager of Bata said:

"Q. What about pricing and discount policy, general merchandising policy?

A. Up to 1948 we sold merchandise on a net price basis. That was until the 2nd January, 1948, if I am not mistaken. Then we switched over to a discount basis in 1948. Our discount list was a similar list to those used by the other rubber companies, by our competitors, and naturally there are exceptions to that, but to a large extent it was similar to theirs.

BY MR. BEAUCHEMIN:

Q. Where did you get the discount list?

A. I believe our sales manager got it from the Acton Rubber Company, if I am not mistaken."

(Evidence pp.3741-42)

(d) Maintenance of the List

The classified accounts lists were kept up to date by discussions at meetings and by correspondence. An example of such discussions at meetings is given in the following excerpt from the minutes of the sales managers' meeting held on August 7 and 8, 1947:

"CLASSIFIED ACCOUNTS LIST: A number of accounts were discussed with the following results:

Delete: Sinclair and Stewart, Summerside, P.E.I.

Substitute: Smallman's Ltd. (Class G)

Add: Nipawin, Sask. to listing of Star Department Store, Melford, Sask. (Class G)

Delete: Nazaire Roy, Windsor Mills, Que.

Substitute: Lucien Hamel, Windsor Mills, Que. (Class H)

Delete: Wright's, Fort Francis, Ont.

Substitute: Niznick Bros., Fort Francis, Ont. (Class H).

Check: George Verzina, Montreal (Class H) reported sold to A. Bastien & Fils, Montreal. Also, Dominion Footwear Co., Hull, Que. (Class F) reported sold to Montreal Shoe Stores."

(Exhibit 832)

Amendments to the classified accounts lists were also dealt with at previous meetings on January 9, February 6, April 10, May 8, June 5 and July 3, 1947. No such references appear in the minutes available for meetings subsequent to August 7-8. Affirmation that changes in the classified accounts list were a matter for joint action is contained in a copy of a letter dated August 12, 1947 from C. D. Pequegnat, General Sales Manager of Kaufman, to R. C. Baird of Kaufman's Regina branch. The letter reads:

"Re: Tisdale Supply Co. (Star Dept. Store).

At the present time this account is listed under Class 'G' 8½% with stores at Tisdale, Melfort and Bjorkdale. You now advise that they have opened up a store at Whitefox, Sask. under the name of Star Store. Will you please advise whether the official name of this store is Tisdale Supply Company or whether they should be known as Star Department Stores at the above four points.

The above will have to be cleared with the Association so that if they are entitled to Class 'G' discount, they can be listed by all Companies."

(Exhibit 155c)

(e) Statistical Evidence of Volume Discounts

In order to secure further information on the nature and effectiveness of the arrangements in respect of discounts, the Commission sent questionnaires to the Companies. In these questionnaires were listed the accounts (approximately 250) found in classes A 1 to G inclusive in the industry classified accounts list and the Companies were required to show, for 1947 and 1948, their annual net dollar sales to these accounts together with the discounts accorded them.

The accounts so listed were, according to the latest information available to the Commission at the time, the largest domestic accounts (excluding jobbers) in terms of aggregate annual purchases from the Companies to whom the questionnaires were sent.⁽¹⁾ They represented about 35 per cent of the total domestic sales of these companies.

The returns were examined for the purpose of determining the relationship between discounts and purchases. It was found that when the returns of the companies were examined separately, the discounts granted bore no consistent relation to the volume of business done with the individual company. But, when the sales of all companies to each account in 1947 were aggregated and shown alongside the discounts granted in 1948, it became apparent that discounts were in fact related to aggregate purchases from all the companies.

(f) Oral Evidence

Various witnesses gave various evidence upon the question as to whether there was in use a common or agreed upon classified accounts list, as the following selections will indicate.

The secretary and manager of the Association stated:

"Q. Can you tell me since decontrol -- since controls came off -- if there have been any agreements entered into by any of the members of the footwear division with respect to these other matters, such as classification of customers and discounts?

A. So-called agreements, yes.

Q. What do you mean by 'so-called agreements'?

A. Well, I mean that we may write down in the minutes that 'it was agreed to do so and so'; but I have no means of ascertaining whether those agreements are observed.

. . .

(1) They were the largest except for a certain amount of overlapping; thus, a few of the accounts in class H for which returns were not required, would probably have been a little larger than some of the smallest accounts in class G.

- Q. At formal meetings? At meetings of the footwear division, for instance, of the rubber industry?
- A. Yes, they have discussed -- some company may bring up a name and suggest that that particular company should be one on the classified accounts list. And they will discuss it, and they will say, 'O.K., that should be in there.' As I say, whether or not any of the companies actually observed that so-called agreement, that this company should be listed, I do not know.
- Q. Since the period of decontrol have you had any complaints of companies which have not observed anything in the nature of an agreement on, for instance, the classification of customers and discounts?
- A. Yes.
- . . .
- Q. You are not able to say whether any agreement on classification of customers and discounts -- you do not know whether the agreement was effective or not?
- A. We have no means of enforcing any of these so-called agreements, no means of policing them, no sanctions of any kind that could be imposed if they are not observed.
- Q. You have received complaints, you say, that certain companies were not observing them?
- A. Quite.
- Q. In the event of complaints, how did you deal with them?
- A. The next time a meeting of the particular group happened, the subject of that complaint will be tabled and discussed."

(Evidence pp. 95-96, 105-6)

An official of Kaufman, whose attention had been directed to Exhibit 485 (see page 469) stated:

- "Q. . . . What do you mean by that, 'Want to get in line'?
- A. We had, as I said yesterday, when prices were frozen, I think we had a different list of classified accounts than the other companies did. We were frozen, and, of course, some accounts were on the list that, perhaps, were not in the right class. We did not want to be an upsetting factor with the other companies in price-cutting.

Q. When you say you want to get in line, does that indicate that, so far as the classified list is concerned, there would be a common classified list for all companies?

A. Yes, they had our list of accounts. I think the industry has our list of accounts. It is open to them. Anybody who wants to know what it is based upon.

...

Q. I take it from this letter of yours, from the second paragraph of that letter to Mr. Charest that, at that time, the representatives of the Rubber Footwear Companies were attempting to get a common classified list?

A. I would say we wanted to be on even terms with any company."

(Evidence pp. 533-4)

An official of Gutta Percha stated:

"Q. Now, turning to Exhibit No. 72; has there been any agreement between your company and any other company or companies manufacturing rubber footwear in Canada since controls were lifted -- any agreement with respect to classified lists and discounts applying to same -- either oral or written?

A. Would you repeat that question? No; we carried on with the classified discounts which were in effect at the end of price controls. We have made some changes in our classified lists ourselves."

(Evidence p. 363)

An official of Northern-Woodstock stated:

"A. Now, a list -- I cannot say that the list we are using, how the names were determined for the various classifications of that list. The list we use was in the possession of the company when I became associated with the company.

Q. Have you made any change in it?

A. We have made some changes in it since then.

Q. Since controls were lifted?

A. Yes.

Q. Were those changes of names discussed at any meeting?

A. No.

Q. You just did that independently?

A. Right."

(Evidence p. 3207)

An official of Cambridge stated:

- "Q. During the period after controls were lifted was there any agreement between the companies with respect to a classified list, that you know of? You say your company did not use a classified list. But do you know from your own knowledge, after having attended meetings and listening to the discussions, whether or not there was any common classified list in the industry?
- A. So far as I know there was a classified list that most companies used as a yardstick for measuring the accounts.
- Q. And each class, on that list -- we have evidence that the classes went from A to H. The people in class A, for instance, were entitled to a certain discount, and those in class B were entitled to a certain discount, and so on. Is that correct?
- A. Yes, that is right. Now, whether in actual practice the companies adhered to that, I would not dare to say."

(Evidence pp. 2245-6)

(g) Effects of the Discount Structure

Under the discount and classified lists structure used by the rubber footwear companies there is no necessary relationship between the discount a customer is given on an order and the size of that order. Nor is there any necessary relationship between the annual volume of business a customer does with any particular rubber footwear company and the rate of discount he is given by that company. C. D. Pequegnat of Kaufman said in evidence:

- "Q. I have been trying to understand, Mr. Pequegnat, the classification list system that is referred to in Exhibit 154. As I understand it, if a person classified with the Kaufman Company as purchasing, say, \$5,000 worth of goods, that might entitle him to a particular discount. Now, that \$5,000 worth of goods is throughout the year, is that correct?
- A. A year, yes.
- Q. Am I correct in my understanding of this system that that has the effect, then, of permitting that customer to buy \$5 worth of goods from the Gutta Percha Company and obtain the same discount?
- A. That is right."

(Evidence p. 534)

The evidence of Mr. Pequegnat continued:

"Q. . . . Let us assume Jones and Smith both operate footwear shops in the city of Toronto. Jones is a big operator who buys \$100,000 and Smith is a little operator who buys \$2,000 worth in a year. However, as a matter of fact, Smith is a very good customer of yours and buys all his \$2,000 worth from you. Jones is not, but he still buys \$2,000 worth of his \$100,000 from you. If I understand correctly, from a practical point of view, under the system discussed in Exhibit 154, you would give Jones a much larger discount than you would Smith?

A. That is right."

(Evidence p. 536)

The few examples below, taken from returns submitted by the Companies indicate that the hypothetical example quoted above is not at all unreal. The names of the buyers and sellers are not shown in order to avoid unnecessarily revealing any business secrets.

Table I

Examples of the Relationship Between Discounts and Volume Purchases

Seller	Buyer	Buyer's Total Purchases from the Seller Named in Column 1			
		1947		1948	
		<u>Purchases</u>	<u>Discount</u>	<u>Purchases</u>	<u>Discount</u>
		\$	%	\$	%
V	A	1,503.19	10	1,948.25	10
V	B	5,236.00	8½	7,285.00	8½
W	C	2,667.00	9	77.00	10
W	D	5,543.00	8½	10,267.00	8½
X	E	14,923.00	8½	14,109.00	8½
X	F	-	-	327.00	11
Y	G	375.00	10	1,419.00	10
Y	H	10,749.00	8½	7,453.00	8½
Z	I	2,718.03	12	3,954.27	12
Z	J	2,435.84	8½	5,603.00	8½

There is evidence that at least some of the rubber companies were conscious of the drawbacks of the discount structure in use. In January 1941 consideration was given to the idea of introducing an entirely new discount structure along the lines suggested in a memorandum written by J. M. Allison of Gutta Percha. Following are some excerpts taken from J. M. Allison's memorandum:

". . .

It is readily admitted by all the companies in the industry that the above price structure is absolutely unsound . . . The proposal outlined in the remainder of this Memorandum is intended to set up a programme of pricing with simplicity as its keynote and with discounts awarded to the buyer in proportion to his ability to earn those discounts.

. . .

The (proposed) new basis of discounts consists in brief as follows:

1. A list price.
2. Discount based on the quantity purchased by each buyer in individual shipments.
3. A prepayment discount for payment in advance.

. . . The discounts would be applied on the pairs ordered, . . . In other words, if a man orders one hundred pairs at a time he gets a certain discount. If he can increase his order to five hundred pairs, he gets a considerably greater discount.

What are the arguments in favour of this plan? First, obvious economy suggests itself. Warehousing costs both in factory warehouses and branches would be considerably reduced. Instead of daily or weekly shipments to a great many accounts, only several shipments in a year would take place, . . . Following on the warehouse expense angle, the cost of local cartage and freight would also be considerably reduced. This is a considerable item with Gutta Percha and we must assume that every company has the same problem. In addition to local freight, there is, of course, the possible reduction in freight through less L.C.L. (less than carload lots) shipments to branches, replaced by more carload shipments, since the demand for goods would be at certain definite intervals in the year, . . .

Following on from this, there is the reduction in invoicing costs. . . . The present discount set-up naturally . . . places no penalty on small shipments. The new basis, by giving an award for taking goods in large quantities, automatically induces the dealers to buy in satisfactory quantities . . .

. . ."

(Exhibits 417D,E,F)

No action seems to have been taken along the lines suggested by Mr. Allison although the problems raised by him still exist in the present discount structure.

(h) Significance of Agreement on Classified Lists

An understanding upon a classified accounts list necessarily presupposes an understanding upon the respective discounts to be given the different classes of customer. The two are complementary and one without the other is meaningless. An understanding upon these matters, in turn, necessarily presupposes an understanding upon list prices because if the agreed discounts were from lists that could be varied at will, the agreement upon discounts would obviously mean nothing.

G. Standard Range

The evidence indicates that from decontrol to the early part of 1948 most of the rubber footwear manufacturers agreed on each successive waterproof and canvas standard range. In 1948 about 85 per cent of all rubber footwear sold in Canada by the Companies mentioned in this Part was made up of standard lines.

(a) Waterproof Range 1947

The conclusion of an agreement on the 1947 Waterproof Range has already been described. This was brought about in the spring of 1947 as part of the work of the Post-War Planning Committee.

(b) 1948 Canvas Range

The Canvas Range for 1948 was agreed upon at a sales managers' meeting held on May 8, 1947. The minutes of the meeting at which Acton, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock were represented read in part as follows:

"CANVAS FOOTWEAR RANGE FOR 1948: On behalf of the Fact Finding Committee, (1) Mr. Minister submitted a proposed canvas footwear program for 1948.

In the discussion which followed, the following points were raised:

1. With regard to Dominion Textile Duck A 141, Mr. Simpson undertook to see if it could be obtained in 52" width instead of 38½" width.

2. With regard to specialties, it was suggested that safeguards similar to those set up in connection with waterproof footwear specialties should be agreed upon.

3. It was proposed that the new compounds should not be used until August 1st, 1947, and should not be delivered before September 15th, 1947. Agreed that this matter be discussed further at the next meeting.

4. Dominion undertook to send laboratory samples of their eggshell compound to all companies. It was agreed that it would be desirable to use only one compound for soles and foxing, if possible.

(1) It will be remembered that the Post-War Planning Committee was to continue to function "as the industry's fact finding and advisory body". (p. 451)

5. A serious study of costs on canvas footwear should be made in preparation for next meeting.

6. The suggestion that Athletic Shoes (Badminton and basketball) be added to the ranges as a specialty for delivery September 15th, 1947, is to be decided definitely at the next meeting. The waterproof specialty pattern of mark-ups and suggested resale prices is to be tried out.

7. Compounds for 'style' shoes to be discussed at next meeting.

8. The subject of changes in canvas range is not to be discussed outside the circle of the Footwear Sales Managers' Group.

9. There shall be no advertising of canvas footwear lines before the placing season opens.

10. Sanitary soles are to be discussed at next meeting for a definite decision.

11. The meeting finally approved and adopted the Fact Finding Committees recommended 1948 canvas footwear program as revised. (See copy attached). (N.B. Constructions and compounds will remain the same as in 1947 range except where otherwise indicated.)"

(Exhibit 300)

The first paragraph of the recommended program which was approved and adopted reads:

"The Fact Finding Committee, in considering the 1948 canvas range, kept in mind the advisability of keeping the basic lines as standardized as possible, and at the same time providing for some flexibility insofar as the general appearance is concerned so that each company could, within limits, decide on their own constructions. With this thought in mind, the following recommendations were arrived at:"

(Exhibit 300)

There was further discussion of the 1948 canvas footwear range at a meeting on June 5, 1947 at which were represented the same companies as at the May 8, 1947 meeting. The minutes read in part:

"Dominion undertook to prepare and distribute to all companies and the Secretary a schedule of 1948 canvas lines and construction."

(Exhibit 435)

Accordingly, on June 10, 1947 W. H. Dotzenroth, in charge of design at Dominion, wrote to the secretary of the Association and to all the rubber footwear companies, except Bata, as follows:

"Utility Canvas Footwear Specification Sheet for 1948

As requested at the last Industry Meeting, we are forwarding to you herewith, general construction information covering the standard line of Canvas Shoes for the 1948 Season as agreed upon to this date."

(Exhibit 89)

The minutes of a meeting of sales managers held on August 7-8, 1947 attended by Acton, Bata, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner, Northern-Woodstock and J. A. Martin, as Co-ordinator⁽¹⁾, read in part:

"UTILITY CANVAS FOOTWEAR RANGE, 1948: It was noted that the schedule of utility canvas footwear constructions distributed by Dominion under date of July 7, 1947 contained a few errors as follows:"

(Exhibit 832)

C. D. Pequegnat was referred to a copy of the 1948 Canvas Range (Exhibit 164) and was asked:

"Q. Paragraph 2, Mr. Pequegnat, to get back to that:

This range will be controlled as to genders, colours, compounds and construction.

Controlled by whom?

- A. The range is agreed as to genders, colours, compounds and constructions.
- Q. That was an agreement arrived at where?
- A. When this range was adopted.

BY THE DEPUTY COMMISSIONER:

Q. That was part of the post-war planning program?

BY MR. MARTIN:

- Q. Which was adopted?
- A. Yes, this is the standard range. There had to be some controls still because they were short of the necessary compounds to make colours. We could not get white and we could not get any ingredients."

(Evidence pp.560-61)

(1) Mr. Martin upon ceasing to be Rubber Controller and Rubber Administrator entered the employ of the Association for the purpose among others of controlling under a voluntary plan the ratio of crude to synthetic rubber consumed by the rubber manufacturing companies.

Referring to agreements on certain details of the 1948 Canvas Footwear Range as recorded in the minutes of the June 5 meeting P. H. Charest said:

"Q. Whenever one reads the word 'agreed' in these minutes on range, does that mean you also gave your assent?

...

THE WITNESS: We consented, more or less, to follow their construction but I know, in this particular set-up here, we did not follow it right through again. There are things there that could be changed inside the shoe which do not change the appearance. If we found we were able to cheapen the cost, we worked it.

BY THE DEPUTY COMMISSIONER:

Q. Those would be changes which would not affect the appearance of it?

A. No, it would not."

(Evidence p. 1617)

(c) Waterproof Range for 1948

At meetings held on October 9, 1947 (Exhibit 476) and November 6, 1947 agreements were reached with respect to the 1948 Waterproof Range. Acton, Bata, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Liner and Northern-Woodstock were represented at these meetings. The following excerpt from the November meeting indicates the nature of the discussion:

"1948 WATERPROOF RANGE: The meeting again reviewed the 1948 waterproof range as discussed at the previous meeting with the following results:-

Boots

Class 100 Hip:- Confirmed that this be added to the range effective January 1, 1948.

Class 104:- Agreed that the short boot only may be made with a cleated sole, effective January 1, 1948. (The short boot will accordingly be available in three styles (1) Plain (2) Safety toe and cleated sole (3) Cleated sole with plain toe. Belt strap optional in this class)

Class 107:- Confirmed that short and stormking boots be added to standard range effective January 1, 1948, in the case of the short boot only."

(Exhibit 475)

The evidence after November 1947 becomes more sketchy but there is evidence to show that more meetings were held and work on the 1948 Waterproof Range continued. The letter written by P. H. Charest

to Acton, "Attention Mr. A. Gagnon", on December 1, 1947 indicating a meeting to be held on December 4 and already referred to in connection with 1948 waterproof prices, also has reference to the range. It reads in part as follows (translated from the original French):

"Regarding the Rubber meeting at Toronto for December 4 next, we pass along certain information so that we may be in a position to know what to do about these questions.

. . .

Class 602.

This is our Cavalier line, and we have permission to make it in only two styles, that is the 'Mabel and Petite' styles. We would like to know if it would be permissible to make it with a flat heel. This point has already been discussed at former meetings and was left over for later discussion.

Class 505.

This is our 'Carriage Boots', which must be made with a fleece lining. We would like to know if the following construction would be considered a permitted specialty. Our intention would be to have this line made on order only, with interior lacing, and cotton-pique lining. Naturally the list price of this line would be higher than class 505.

We hope you will attend to these questions and see that we get a report after the meeting."

(Exhibit 474)

Another meeting was held on January 8, 1948 and minutes of it have been received but they are very brief and only through another source was it disclosed that the 1948 Waterproof Range was discussed. The reason for the abbreviation of the minutes seems to have been that the Companies were concerned about the investigation by the Combines Investigation Commission. The minutes, which do not set out the attendances, read in part:

- "1. The recent visits of representatives of Mr. F. A. McGregor's office to Rubber Footwear Plants came up for discussion. In view of the fact that the joint effort of the Industry has been to eliminate wasteful practices in production and distribution with a resultant favorable effect on price levels, it was the general conviction that Industry meetings should be continued."

(Exhibit 765)

That the 1948 Waterproof Range was discussed at this meeting is shown by a letter from A. Gagnon, Manager of Acton, to Alfred Lambert, "Attention P. H. Charest". The letter, dated January 15, 1948 reads in part as follows (translated from the original French):

"You will find enclosed a copy of the minutes of a meeting of sales managers held in the Mount Royal hotel on January 8. In the light of these discussions our company has decided as follows:

The hip boot class 100 will be made with the top part straight instead of a bell top as some companies made it before the war under the designation Thigh Boot or Sporting Height.

Our new Bottom must be sold at least 50 cents a pair higher than the present black Bottom.

We confirm that the Child's Snow will definitely not be in our range this year.

Classes 507 and 509 will be made in black only.

...

We. . . suggest that you adopt as opening date for your autumn placing season the 15th March, 1948. That is the date on which we plan to place 'scabs' (rubber labels) on our first quality boots.

It is important that we have a representative at the Retail Footwear Merchants' convention which will be held at Quebec from 8 to 11 February and that we have an ad in the souvenir-programme which will be prepared for that occasion.

We have just learned that Long Lac Pulp & Paper Co. of Terrence Bay Ont. is controlled by Kimberley Clark Corp. of Canada Ltd. the same as Spruce Falls Pulp & Paper and that these three names ought to be on the 'G' List.

When we sell small quantities of footwear to other rubber manufacturers or to their wholesalers, it is customary to give them the regular 5% discount plus a courtesy discount of 10%. If we sell regularly to a jobber, his class discount should be applied.

If you receive requests to make rubber bottoms for aviator boots, we are of opinion that it will be necessary to refuse them because we do not know what quality of upper will be attached to them."

(Exhibit 463)

A later discussion - in March 1948 - of the 1948 Waterproof Range is indicated in Exhibit 633 which is referred to at page 510.

(d) Canvas Range for 1949

The letter of March 5, 1948 from P. H. Charest to Acton, "Attention Mr. Keiswetter", the rubber plant superintendent, already referred to in connection with 1948 waterproof prices, shows that discussions of the 1949 Canvas Range were under way. The letter reads in part:

"Following the interview we had this week with other Rubber Footwear Company Managers, it has been stated that we should start studying now, our program of Tennis Footwear for 1949. We mean by this, that we are supposed to study conditions of sales, etc., as well as new lines, also new trimmings or new colours."

(Exhibit 467)

(e) Oral Evidence as to Agreements on Range

The oral evidence on the question as to whether there had been agreements upon range in the post-control period varied. A number of extracts from such evidence have already been reproduced in this chapter. Those, together with the following, are representative of such evidence:

An official of Miner stated:

"Q. Since controls were lifted on April 1, 1947, until the present time (November 1948), has there been any agreement between your company and any other manufacturer or manufacturers of rubber footwear with respect to the range to be made?

A. Well, no.

Q. As I say, when I say 'agreement' I mean any arrangement, or any understanding, either verbal or written. I do not necessarily mean a written agreement or one reduced to writing and signed by all parties. I mean any verbal or oral or written understanding or arrangement or agreement with respect to range?

A. Well, there is the standard range which was set up by the rubber controller.

Q. Yes?

A. It was used as a base and lines have been added.

Q. Yes?

A. If we decided to add a line we put it in when we wanted to.

Q. In other words, when you say 'we' you refer to whom?

A. To the Miner Rubber Company.

Q. Independently of any other, independently of the approval of any other companies, you can do anything to the range that you like?

A. Yes."

(Evidence p. 1274)

An official of Dominion stated:

"Q. What has Mr. Parsons reported to you about these meetings, as to what these discussions referred to?

A. Lines of shoes, only.

Q. Only with reference to classification?

A. Yes.

Q. What has he reported to you with reference to classification?

A. That there were certain lines agreed upon by specification that they were to put into the line, plus any line of any kind that we wanted to put in on top of it. In other words, it was a partial understanding, but no definite understanding of where we would go in our classification of shoes.

Q. What value could that have to your company or the industry generally?

A. The standardizing of so-called staple lines of shoes which was agreed upon to Mr. Martin during the period of the war.

Q. And the agreement continued after the period of the war, did it?

A. Yes, it continued after the war period on the recommendation of Mr. Martin.

Q. These classifications were continued?

A. Yes.

. . .

Q. Is that the same thing as someone has described as range?

A. Yes.

Q. Agreement on range?

A. Yes."

(Evidence pp. 1763-5)

In referring to measures taken by the industry to limit the range, witnesses referred not only to the advantages of a limited range in the face of immediate post-control scarcities of material, but also to its advantages from a longer-term viewpoint. An official of Goodrich when referred to the minutes of a meeting of general managers held on February 27, 1947 gave evidence as follows:

"Q. I see at the bottom of the page, in the last paragraph, these words --

He then called on Mr. Miner who stated that he had suggested the meeting because the footwear general managers had not met for a long time and he felt that they should meet if only to show clearly that the sales managers, who have done a good job, have the full support of their top management behind them and will have it when rubber control ceases to function in the near future. He expressed the emphatic opinion that the industry must work together in the future as it had during and because of rubber control, if the losses prevalent in the pre-war period were to be avoided.

Do you recall that discussion?

A. Yes.

Q. And the remarks by Mr. Miner?

A. Yes, I do.

Q. I suppose when he referred to the question of working together in the future, he was making reference to the question of the limited range imposed during the war?

A. Yes, primarily that was it.

Q. Limited range?

A. Yes.

Q. And discounts were frozen?

A. I don't recall exactly what they were. But I know one of the great losses of the industry was due to wastes in range. During the war we cut down our distribution costs and laid off a lot of salesmen, and closed warehouses around the country, which had a real beneficial effect in getting our costs down. And it was thought that the sales managers, under the rubber control period, had done a splendid job. And that is what we wanted them to do -- to continue to do -- along the line of keeping costs down in our industry.

Q. You say the main item in that was to retain the limited range?

A. Yes, the limited range, primarily, and to keep costs down, and not to go haywire in putting up a stock in a little town in order to service someone who should have better sense. The cost of distribution in the footwear business during the years has been all out of reason. And rubber control --

BY THE DEPUTY COMMISSIONER:

Q. Do you mean the proposal to limit the number of stocking points?

A. No, not exactly, but certainly not to go hog-wild. It was not to limit them, but to say, 'Here, I think we are able to reduce our costs of distribution by good, ordinary, common business sense.' And we would hope that that would continue. But there is no agreement on the lines of footwear we make. In footwear you have a style factor. If you have a long range of sizes and types, and do not time it pretty carefully, you will have tremendous obsolescence, such as we do not have particularly in other lines of the rubber industry. And we did not wish to get foul of the Combines Investigation Act. We wanted to be fair. We went so far as to say, 'Let us go up and talk it over with the man, and see where we stand.'

Q. Yes, I see there was some discussion about that.

A. Yes; of all the divisions of the rubber industry, the footwear boys did the finest job, in my estimation, in reducing costs and standardization.

Q. During the period of the war?

A. Yes.

BY MR. MARTIN:

Q. What has happened since decontrol on April 1, 1947, so far as range is concerned? Were the proposals or opinions advanced by Mr. Miner at that meeting given effect to?

A. In a nominal way. If we want to go out today with a certain type of boot, we are free to do so.

Q. Can you give me some comparisons between the range today and pre-control?

A. I imagine our range is down to about one-half of what it was."

(Evidence pp. 3356-58)

H. Jobbers

Most of the Companies do business through jobbers as well as selling direct to retailers. It will be remembered that it was estimated that about 20 per cent of the total industry volume of business is done through jobbers (Exhibit 362). The recognized discount in the rubber footwear industry for regular jobbers has been 16 per cent and 5 per cent (Evidence p. 572). It will also be remembered that this particular discount originated in 1942 in an adjustment permitted by Rubber Control for the purpose of holding ceiling prices (Exhibit 91b, c).

As a measure of support to their common price structure, the majority of the Companies pursued an agreed-upon policy in respect of jobbers. The immediate object was to restrict the list of jobbers to persons possessing agreed-upon qualifications. One purpose was to exercise a measure of control over the number of jobbers since the location of every jobber who carried stocks became a "prepay point" to which the Companies prepaid freight, thus reducing net returns. Another purpose of the common policy was to ensure like treatment from all the Companies in the case of jobbers who also operated retail outlets. Yet another purpose was to make effective the uniform discounts.

On April 16, 1947 C. M. Mather, Sales Manager of the Footwear Division of Gutta Percha wrote, as Chairman, Rubber Footwear Association, to all the other Companies, except Bata, as follows:

"SUBJECT: Footwear Jobbers' List

Gentlemen:

We have received the revised list of Footwear Jobbers as per Rubber Association letter, April 12, 1947, and find that there are several additions since the issuing of a list that was attached to the agenda for our meeting, April 10, 1947.

For many years we have attempted to control the names on the footwear jobbers' list and have defined the status of a jobber, making an effort to confine the list to those who actually solicited business from the shoe trade.

On many occasions it has been difficult for those companies who had Mechanical Goods Jobbers to resist the efforts of these accounts to secure shoe jobbers' discounts, but up to the present this has been controlled. The new list, however, shows several of these names.

We suggest that this new suggested jobbers' list should not be adopted, nor commitments made to new accounts until our next meeting and further, that the list be reviewed by the Advisory Committee at their meeting May 7, 1947."

(Exhibit 134)

The last general revision of the industry jobbers' lists, of which record has been received was made at a meeting held on May 8, 1947 attended by Acton, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock. The minutes read in part as follows:

"FOOTWEAR JOBBERS' LIST: The Chairman (C.M.Mather) indicated that he had been disturbed to note that the Consolidated Footwear Jobbers' List sent out by the Association had contained the names of several mechanical goods jobbers. He felt that the list should include only genuine footwear jobbers.

Mr. Minister reported that the Fact-Finding Committee thought that a multiplicity of jobbers complicated distribution problems and added to costs by creating additional pre-pay points. They thought the list should be kept as short as possible and should include only genuine footwear jobbers. However, they had come to the conclusion that industrial goods jobbers who had been on the list for a considerable time could not well be removed. But in future, only jobbers who are exclusively footwear jobbers should be added, and additions should be cleared at meetings.

The meeting then reviewed the consolidated list sent out by the Association and made a number of changes. (See revised list attached).

The status of commission jobbers was clarified as follows: They carry no stock, and book orders on samples. The orders are shipped direct to the retailers. If the jobber collects and remits payment from the retailer to the manufacturer, his commission is 10%; if not, 7½%."

(Exhibit 300)

A list of jobbers was attached, with the jobbers divided into four categories.

C. M. Mather referring to Exhibit 134 said in evidence:

"Q. What do you mean when you say you attempted to control?

A. We tried to pass on the jobbing of rubber footwear to those people whom we consider are legitimate jobbers, people engaged in the footwear business who have legitimate jobbing businesses, stocking goods, and having travellers on the road . . .

. . .

Q. And you say you attempted to control; and I assume you did that by having jobbers' lists which were recognized not only by your company but by the other companies in the rubber footwear industry in Canada?

A. Yes.

Q. And those jobbers were the only people to which any manufacturer was entitled to sell on a jobber basis?

A. Yes."

(Evidence p. 337)

Later in his evidence Mr. Mather said:

"Q. Has there been any agreement between your company and any other company or companies manufacturing rubber footwear in Canada with respect to jobbers' lists, since controls were lifted?

. . .

THE WITNESS: I would say yes, there was an understanding as to who were jobbers.

BY MR. MARTIN:

Q. And when you say there was an understanding, what do you mean by 'understanding' -- do you mean an arrangement or agreement? What is an understanding?

A. At one of our meetings jobbers' lists were discussed.

Q. Yes?

A. And jobbers' lists were listed -- that is, in the minutes.

Q. Yes?

A. And everybody -- well, I went away from that meeting with the understanding that was the jobbers' list.

BY THE DEPUTY COMMISSIONER:

Q. What jobbers' list is that?

A. The jobbers' list of the Canadian rubber footwear manufacturers.

Q. That your company was going to observe?

A. Yes.

Q. And that the other companies were going to observe?

A. That was my understanding."

(Evidence pp.365-6)

Mr. Mather went on to state, however, that if Gutta Percha wished to do business with a person whom they were satisfied was conducting a proper jobbing business they would put him on the list and so advise their competitors without previous consent (Evidence p.368). He then went on to testify:

"Q. May I put the question in another way. I understood you to say that your company did enter an agreement on the matters to which Mr. Martin has just referred (jobbers' lists and range), those two aspects?

A. Yes.

Q. Did your company at any time since the control period do anything contrary to those agreements?

A. No.

Q. Have the agreements continued in effect throughout the period since they were entered into to the present?

A. We have not changed our position up to the present."

(Evidence pp.377-8)

Asked what was the purpose of having an agreement on jobber lists, Mr. Mather stated it was necessary to know where all jobbers were located because each stock carrying jobber was a freight prepay point and, for the same reason, it was advisable not to have such points increased if possible (Evidence pp.380,1). The witness gave his evidence in October 1948.

On October 20, 1944 C. D. Pequegnat, General Sales Manager of Kaufman wrote with respect to control of jobbers:

" . . .

It has been estimated that about 20% of the total industry volume of business is done through jobbers. 90% of the business is done by about 10% of the jobbers on the jobbers' list. The jobbers who are doing the bulk of the volume are large operators and in most cases are under the direct control of manufacturers. . . .

. . . "

(Exhibit 362)

T. Y. O'Neill, formerly Sales Manager of Miner, said in evidence referring specifically to the period between 1938 and 1941:

"Q. Was it the practice of your company to require jobbers to observe any particular schedule of prices when re-selling to retailers?

A. Yes. We were selling to the retail trade through our branches, and you can see what a chaotic condition might exist if we allowed our jobbers to go out and sell at other prices."

(Evidence pp.1122,1123)

The foregoing will indicate the means which the Companies had at their disposal to prevent their policy of common prices to retailers from being disrupted by jobbers who might be tempted to extend to such retailers prices more favourable than those of their principals for the sake of acquiring volume. The evidence does not indicate that any particular problem arose in this respect except, occasionally, in connection with jobbers who also operated or controlled retail outlets. One such incident has previously been indicated in Exhibit 151 on page 470.

It will be remembered that jobbers' discounts were among the items upon which industry agreement was recorded by C. M. Mather of Gutta Percha in Exhibit 72d.

I. Terms of Sale including Transportation Charges

Incillary terms of sale were the subject of express or tacit agreement to the extent necessary to prevent any ~~one company~~ from deriving a competitive advantage from terms more favourable than those of another company. The minutes of the meeting held on March 6, 1947 for example, contain the following item:

"PRICE GUARANTEE CLAUSE: It was agreed that it shall be optional to show a price guarantee clause on price lists."

(Exhibit 207)

The minutes of the meeting held on April 10, 1947 contain the following items:

"SERVICE CHARGE ON RETURNED GOODS: All companies re-confirmed their intention to continue making a 10% service charge on returned goods. It was agreed that Branches should be notified to this effect.

SHIPMENT OF PLACING ORDERS: Agreed that all companies have the privilege of shipping placing orders in May with fall dating."

(Exhibit 931)

The general rule in respect of transportation charges was that freight charges in the east were paid to destination on shipments of 100 or more pounds and on lesser shipments the freight was paid to industry "prepay" points. In the west the freight was paid to prepay points. An allowance, equivalent to freight, was made in cases where another mode of transportation was employed.

The minutes of the sales managers' meeting of May 8, 1947 contain the following item:

"PREPAYING OF BACK ORDERS: All companies are to check into their compliance with the agreement of May 3rd, 1945, quoted below, for discussion at next meeting:

'PREPAYMENT OF ORDERS: The meeting re-affirmed that placing orders of 100 lbs. or more, and back orders of placing orders where the original order was for 100 lbs. or more, shall be prepaid. In the case of sorting orders, there shall be no prepayment on back orders of less than 100 lbs.' "

(Exhibit 300)

The minutes of the next meeting, held on June 5, 1947 attended by Acton, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock contain the following item:

"PREPAYMENT OF BACK ORDERS: The Minutes of May 3rd, 1945, (quoted in the Minutes of last meeting) was confirmed as satisfactory.

It was noted, however, that some companies are paying half the express charges on orders (placing or sorting) valued at \$25.00 or more. All companies are to check this for discussion at next meeting."

(Exhibit 928)

The next meeting was held on July 3, 1947 and the minutes contain the following item:

"PAYMENT OF EXPRESS CHARGES: With reference to the discussion regarding payment of express charges at last meeting, Mr. Mather pointed out that the old agreement, under which Gutta Percha was still operating, was as follows for the East:

Orders weighing under 25 lbs. - Collect
Orders weighing from 25 lbs. to 100 lbs. - One half prepaid.
Orders weighing over 100 lbs. - Freight equivalent allowed.

Consideration of this matter led to a discussion of the problem of freight charges as a whole, in which the view was expressed that the situation was in need of review.

It was agreed, therefore, that the Fact-Finding Committee should be requested to study the whole freight problem, including such aspects of it as equalization points, pre-pay points, etc., and to submit to the Group as soon as possible recommendations for a set-up suitable to normal supply and selling conditions."

(Exhibit 478)

The Companies treated as prepay points all places where any manufacturer carried stock, whether at a company branch or through a stock carrying jobber. C. M. Mather of Gutta Percha said in evidence:

"Q. In other words, if another company has a jobber at Yarmouth and you do not happen to have a jobber at Yarmouth, Yarmouth would then be - - -

A. A prepay and equalization point with me.

Q. Would it be with all the other companies, as a matter of fact, so far as you know?

A. Yes.

. . .

BY MR. MARTIN:

Q. In other words, the company that has a jobber, so far as pre-payment and freight, they will be f.o.b. Yarmouth -- say it is Dominion, for example, Dominion will be entitled to pre-pay freight to the jobber at Yarmouth and that means if you sell to any customers at Yarmouth, you will pre-pay freight to Yarmouth?

A. Correct, we land goods in Yarmouth, freight or express, to equalize."

(Evidence pp. 381-2)

In 1944 C. D. Pequegnat, General Sales Manager of Kaufman, wrote a memorandum for the Post-war Planning Committee in which he proposed that the industry change over to f.o.b. mill pricing. An examination of his memorandum, however, reveals that he proposed that all plant locations continue to be used as prepay points. This, along with other arrangements he suggested would have had the effect of keeping all delivered prices uniform. In regard to the new arrangements with jobbers that would have been necessary he said:

". . .

. . .The larger group (of jobbers) who do a very small percentage of the total jobber volume might be difficult to control and most likely would not adhere to some of the regulations that would be set up. It is for the industry to decide whether we want to shy from an F.O.B. Factory Price basis on account of the possible non-adherence to regulations by a small minority.

. . ."

(Exhibit 362)

He also said:

". . .

Regardless of what regulations are adopted, particularly in the case of prices and transportation charges, we do not anticipate that they will be respected 100%. We know and admit that one of the companies in the group will not respect any set of list prices and discounts that are adopted and the industry will have to cope with this problem. In view of this, should we refrain as a group from adopting an F.O.B. Factory Price basis through the possibility of some of the jobbers not conforming to making additional charges that may be fixed for shipments out of jobbers' stocks?

. . ."

(Exhibit 362)

Mr. Pequegnat's proposals were not implemented and no important changes have been made in transportation policy.

In 1947 however, efforts were made to reach agreement and some agreement was reached on reducing the number of prepay points by reducing the number of company stock carrying points and not appointing jobbers unless they were located at company stock carrying points. This would have the effect of decreasing the cost of freight absorption to the Companies with a resultant improvement in revenue.

At the May 8, 1947 meeting attended by representatives of Acton, British, Cambridge, Dominion, Goodrich, Gutta Percha, Kaufman, Miner and Northern-Woodstock, concern was expressed over the multiplicity of jobbers which created an undue number of prepay points. The minutes read in part:

"Mr. Minister reported that the Fact-Finding Committee thought that a multiplicity of jobbers complicated distribution problems and added to costs by creating additional pre-pay points. They

thought the list should be kept as short as possible and should include only genuine footwear jobbers. . . . in future, only jobbers who are exclusively footwear jobbers should be added, and additions should be cleared at meetings."

(Exhibit 300)

At the meeting held on August 7 and 8, 1947 all Companies except Cambridge accepted a recommendation:

". . .

(c) That no further jobbers be added to the present list except genuine footwear jobbers located at company stock carrying points.

. . . Cambridge undertook to discuss with the group the establishment of jobbers at other than company stock carrying points.

". . ."

(Exhibit 453)

At the same time a recommendation was accepted to limit company stock-carrying points to Vancouver, Edmonton, Winnipeg, Toronto, Montreal, Quebec City, and the option of one at Moncton, Saint John or Halifax. The following reservations, however, were noted in the minutes:

". . .

Acton pointed out that temporarily they have two branch points in the Maritimes, but stated that it was their intention eventually to have one only. They will give further consideration to the possibility of speeding up the change-over to one branch. Gutta Percha reported that, after careful consideration, they felt they required two stock-carrying branches in the Maritimes. However, they undertook to give the matter further consideration. The remaining companies agreed to continue with only one branch in the Maritimes until final decisions have been reached by Acton and Gutta Percha.

Gutta Percha also undertook to give serious consideration to the gradual closing of their Regine branch, to be completed early in 1948.

". . ."

(Exhibit 453)

The reluctance of Gutta Percha to close one of its Maritime branches led to severe criticism. On August 18, 1947 A. J. Minister, General Manager of the Footwear Sales Division of Goodrich wrote to C. M. Mather, Sales Manager of the Footwear Division of Gutta Percha as follows:

"Ever since we had the last meeting of Sales Managers here in Kitchener, I have been very much disturbed because of the attitude which your Company has taken with regard to company warehouses in the Maritimes. You have insisted that you require branches in both Halifax and St. John, even though all other companies are prepared to select one location.

This appeals to me as being a very unfortunate situation, because it is the first occasion on which we have been unable to arrive at a harmonious

agreement on a major matter, and it is particularly unfortunate, because you have been looked upon previously as a leader in co-operative effort.

The stand which you have taken may well have serious repercussions in that it may be the thin edge of the wedge in the breaking down of harmony in the Industry. I do not presume for a moment to attempt to dictate policy to your Company or any other, but I am very much concerned about the possible far-reaching affects of your attitude in this matter.

There has already been some conversation about the incident, and the feeling is that your Company wants a competitive advantage over other companies who are prepared to live with one location. If later on some of the rest of us find that we are unduly affected, the final result may well be the giving up of any attempt to control points of distribution, in which case your Company will find itself with more competition in the Maritimes from a service angle than would be the case if you were able to subscribe to a one-branch-point program. In the past we have had three branches in the Maritimes, but have been willing to subscribe to the one branch per company proposal because we felt that what we would lose at one point we would make up at the other.

I have taken the liberty of bringing this matter to your attention because you may not recognize the serious implications which are involved, and I feel that you would want me to express my convictions. It may interest you to know that Mr. Pequegnat is equally concerned regarding future possible developments."

(Exhibit 15)

Mr. Mather replied on August 19, 1947 in part:

"We realize that it is very necessary that the Association is run on a basis of where the best interests of the whole group are concerned and assure you that it is not our intention to create any situations which would cause a lack of confidence amongst the other members.

You will remember that at our last meeting we agreed to fall in line and discontinue as soon as possible carrying stocks at Regina Branch. . . .

. . .

. . . I am just outlining in these few paragraphs our own position but certainly cannot overlook the conditions mentioned in your letter and will again re-study the situation and endeavour to come to some conclusion that might be satisfactory to ourselves and the group . . ."

(Exhibit 16)

J. Expurgation of Footwear Minutes

The revision of minutes, after the beginning of preliminary inquiries leading to this investigation, by the secretary of the Association has already been referred to in Chapter 4 of Part I. It is not known how extensive such revision was and it does not appear to have been carried out upon a completely consistent or logical basis. The secretary particularly recalled that he had revised the footwear minutes of April 10, 1947, May 8, 1947 and June 5, 1947. In respect of the first two the documentary evidence makes it possible to determine the changes or most of the changes that were made.

(a) Footwear Manufacturers' Meeting of April 10, 1947

A total of seven identical mimeographed copies of the minutes of a meeting of sales managers of the rubber footwear companies held on April 10, 1947 were received (Exhibit 433). Also received was a document, Exhibit 401, from the files of Miner, entitled "Extracts from Minutes of Sales Managers Meeting, Thursday, April 10th, 1947, Held In Montreal", and bearing the typed initials of W. G. Simpson, General Sales Manager of Miner.

On comparing Exhibit 401 with the minutes of the meeting, it was found to be made up of verbatim extracts from the minutes except for two additional sentences in Exhibit 401. Following is the relevant portion of Exhibit 401 with the additional sentences printed in italics:

"... Goodrich reported definite inability to obtain an adequate supply of standard quality leather for leather tops. They understand that there is a good supply of splits available, and several accounts have advised that they would be prepared to accept a leather top made with splits. Accordingly, Goodrich suggested that a leather top made with splits be added to the range as a strictly temporary measure. On the basis of Goodrich costs, this leather top could be sold at an Eastern list of \$4.45.

...

It was agreed that all companies should check into (1) the supply of splits (2) the supply of better quality leathers and (3) costs, and to clear with the Secretary by April 18th.

..."

(Exhibit 401)

(b) The Meeting of May 8, 1947

A total of seven identical mimeographed copies of the minutes of a meeting of the sales managers of the rubber footwear companies on May 8, 1947 were received, one of them from the files of Miner (Exhibit 434). An eighth copy, Exhibit 300, also received from the files of Miner, was exactly the same as the other copies except for certain additional phrases contained in it. The relevant portions of Exhibit 300, with the additional phrases printed in italics are given below:

" . . .

Mr. Minister reviewed the findings of the Fact Finding Committee regarding City Boots. He mentioned the pressure from the trade for the Boots, but referred to the factors weighing against their production, i.e. the unsatisfactory basic period price and the shortage of more essential types of footwear. He stated that the Committee recommends that the delivery of City Boots be postponed to January 1, 1948. They feel that the basic period price marked up by about 17½% (the average mark-up on other lines) would be reasonably profitable, subject to a check on present costs of production.

Dr. Herz stated that Bata will make only plain black varnished boots and that, subject to confirmation, the prices at which they would be sold, net f.o.b. factory, Batawa, were as follows:

Sizes 8 - 10	\$1.43
11 - 2	1.75
Boys 1 - 5	Not yet decided.

He stated that Bata would like to adopt the system of discounts used by the industry.

. . .

The status of commission jobbers was clarified as follows: They carry no stock, and book orders on samples. The orders are shipped direct to the retailers. If the jobber collects and remits payment from the retailer to the manufacturer, his commission is 10%; if not, 7½%.

. . .

SPLIT LEATHER LEATHERTOPS: It was agreed that the split leather leathertop recently added to the range on a temporary basis at East \$4.45, West \$4.67, be known as Class 202.

. . .

CITY BOOTS: The Fact Finding Committee recommended that the industry prepare to deliver City Boots as of January 1, 1948. In the meantime, the Group should review costs and decide upon selling prices, consulting with Bata on the latter.

The meeting approved this recommendation and agreed that the trade may be informed verbally that City Boots will be available January 1, 1948, with orders to be booked along with Canvas footwear, commencing September 15, 1947. The costs to be studied are for Misses and Childs boots (a) in cartons and (b) in bulk. This agreement applies to Newfoundland also.

CLASS 200 & 201: It was remarked that Acton are selling Classes 200 & 201 with sock-savers, at the regular price without any mark-up although an old industry agreement calls for a 10-cent extra charge for sock-savers.

In reply, Mr. Lambert stated that for years they had built these numbers with sock-savers as their regular standard construction without making any extra charge. They had commitments to deliver on this basis and could not charge the extra on these commitments. He agreed that the extra charge would be made in the future.

CANVAS FOOTWEAR RANGE FOR 1948: On behalf of the Fact Finding Committee, Mr. Minister submitted a proposed canvas footwear program for 1948.

In the discussion which followed, the following points were raised:

. . .

6. The suggestion that Athletic Shoes (Badminton and basketball) be added to the ranges as a specialty for delivery September 15th, 1947, is to be decided definitely at the next meeting. The waterproof specialty pattern of mark-ups and suggested resale prices is to be tried out.

. . .

CONTROL OF OBSOLETEs: Mr. Minister suggested that any company wishing to clear out obsoletees should send samples with quantities, sizes, and suggested prices to the Secretary who would get in touch with the Fact Finding Committee for a clearance.

It was agreed to consider this suggestion further at the next meeting.

. . .

CLASSIFIED ACCOUNTS: Mention was made of the fact that in a number of instances Kaufman's discounts to accounts differ from those shown in the Classified Accounts List. It was agreed an effort should be made to clear this up before canvas placing.

. . ."

(Exhibit 300)

Another document, Exhibit 390, was received from the files of Miner. It was headed "Extracts from Minutes of Sales Managers' Meeting held in Toronto, May 8th, 1947", and bore the typed initials of W.G. Simpson, General Sales Manager of Miner. The wording of the extracts was, with one small exception, exactly the same as that in Exhibit 300, the unexpurgated version of the minutes.

Lastly, Exhibit 836 was received from the files of the Association. It is a letter dated May 16, 1947 from A. J. Minister, General Manager of the Footwear Sales Division of Goodrich to Greig B. Smith, Manager and Secretary of the Association. Mr. Minister wrote:

"As usual your minutes of the May 8 meeting were very accurate and well worded.

I have a question when I read item 9 on page 6, which says -'There shall be no advertising of Canvas Footwear lines before the placing season opens.' It seems obvious, however, that everyone would realize that that sentence had to do with new Canvas Footwear lines."

(Exhibit 836)

Mr. Minister stated in his evidence that in the first paragraph he was being courteous to Mr. Smith and that he did not agree that the minutes or Mr. Smith's notes were always accurate (Evidence p. 3462).

The Commission examined the copy of the minutes of the May 8 meeting which it had received from Goodrich and found that the item referred to in the above letter was on page 5 rather than on page 6. It was found, however, that the item did appear on page 6 in Exhibit 300, the unexpurgated version of the minutes received from the files of Miner. It appeared likely, therefore, that on May 16, 1947 Mr. Minister had had access to a copy of the minutes similar to Exhibit 300.

K. Oral Evidence - General

As will have been seen from the foregoing pages, the evidence varied to a considerable extent as to the inferences to be drawn from the documents and the matters recorded therein, and as to the exact nature of the relationships among the Companies. Aside from some actual conflicts in the recollections of the different witnesses, a number of different interpretations were offered. It was said at various times, for example, that the meetings were for the exchange of information only; that the Companies did not feel themselves bound by the relationships described as agreements or in similar terms; that the Companies did not take the so-called agreements seriously; that Dominion, occupying the dominant position in the industry, simply informed the other companies what Dominion proposed to do, and that was that; and that the minutes erred in referring to the proceedings as agreements at all. Various examples of these interpretations appear in the foregoing pages, and to these there may be added the following extract from the evidence of C. B. Parsons of Dominion relating to the minutes of the sales managers' meeting of October 9, 1947 which contain the following item:

"1948 WATERPROOF RANGE: Changes to be made in the waterproof range for 1948 were discussed with the following results:"

(Exhibit 476)

and there follows a large number of items to be added, deleted or further considered. Mr. Parsons said:

"A. Yes, that is general information to the companies, what was being done by us.

Q. Was there any agreement that would be done?

A. No." (Evidence p. 1926)

A little later on he was referred to the minutes of the sales managers' meeting of November 6, 1947 (Exhibit 182) and he said:

"A. Yes. It was purely a matter of information as to range. I recall that meeting very well.

. . .

Q. The language used there does not seem to indicate that a party was free to act as he wished. I find the word 'confirmed', 'agreed', 'confirmed' -- all these on page 1 of Exhibit 182. It states --

Agreed that the short boot only may be made with a cleated sole, effective January 1, 1948. (The short boot will accordingly be available in three styles (1) plain, (2) safety toe and cleated sole, (3) cleated sole with plain toe. Belt strap optional in this class.)

A. That was ours.

Q. I draw attention to the language used there.

A. Yes, I know. That is Smith again -- Greig Smith.

. . .

A. The leading company would make that boot, and if they wanted to make it it was agreed that that would be the boot they would make.

. . .

Q. (by Counsel for Mr. Parsons) You were telling the industry that you were going to make that boot?

A. Yes. And they looked at it, and some would say that they would make it the same way. But they do not tell us that. Sometimes at a meeting some fellow comes along with a bright idea, and we would say 'That looks all right, we will follow suit' --"

(Evidence pp.1935-37)

"Q. Is there any arrangement or understanding, to your knowledge, that has been in force since April 1, 1947, that they would follow you on prices?

A. No.

Q. Or on range?

A. No, entirely their own, the same as our own."

(Evidence p. 1943)

"Q. Why did you not complain about these inaccuracies in Smith's minutes? You received the minutes and we have seen the minutes today in which the word 'agreed' is used repeatedly. According to your evidence there was no agreement of any sort?

A. During control.

Q. You said earlier you did not complain and I am asking why you did not complain. I am not speaking only about the time of controls, but since controls?

A. I did not consider it of sufficient importance. If it were an official, binding agreement, it would be a different story.

Q. Well, the minutes were not true, as you have seen here?

A. From a legal point of view, that is right.

Q. But you did not consider it necessary to complain to him about the language used?

A. I did not think it was necessary to complain. The subject matter did not warrant it.

Q. I think a man as inaccurate as that did not deserve to hold his job. He deserved to be fired. Looking at the minutes of the meeting, he used the word 'agreed' repeatedly and it is not true but, in any event, you did not complain about it?

A. I cannot recall, myself, personally making any complaints. The other members might have."

(Evidence pp.1946-47)

There is no evidence that any of the other Companies complained either.

L. Bata and British

Various attempts were made to draw Bata and British into the ambit of industry agreement. These attempts were upon the whole unsuccessful, although some measure of cooperation was achieved, and both these companies, as will have been noted, attended a considerable number of the meetings.

(a) Bata

At a meeting held on September 28, 1944 (Exhibit 946) it was noted that Bata was soliciting orders for canvas footwear and the minutes proceed: "All companies to watch this situation closely and report at later meetings." The minutes of a sales managers' meeting held on November 7, 1946 contain the following item:

"BATA: Mr. Charest reported that Bata was adding new lines of both canvas and waterproof footwear and suggested that it might be advisable to try to have Bata join the Association. It was agreed that Acton should sound Bata out, unofficially, regarding this suggestion."

(Exhibit 206)

The minutes of a sales managers' meeting held on February 6, 1947 record that a representative of the Group expected to be in touch with Bata shortly regarding membership in the Association (Exhibit 933).

The sales managers' meeting of May 8, 1947 (Exhibit 300) was attended by C. K. Herz, Vice-President and General Manager of Bata, and W. J. Parry, also of Bata, and the chairman outlined to them the activities of the Group. Dr. Herz replied that the industry's sales policy was in accord with Bata's intentions but he was unable to make any commitment to conform to industry patterns because of Bata's manufacturing processes though he felt some satisfactory arrangement could be worked out and undertook to discuss it with his directors. It was agreed that a delegation from the Group would visit Bata at an early date and give Dr. Herz full details of the industry's program.

C. H. Henderson of Bata attended the sales managers' meeting of July 3, 1947 (Exhibit 927) where his presence was welcomed as an indication that the delegation's visit to Bata had been a real success. The sales managers' meeting of August 7-8, 1947 (Exhibit 926) was also attended by C. H. Henderson of Bata and it is recorded that Mr. Henderson made a reservation on behalf of Bata with respect to an agreement upon the manner of packing City Boots. Mr. Henderson also attended the sales managers' meeting of October 9, 1947 (Exhibit 924) and A. Daicar, Bata's Sales Manager, attended the sales managers' meeting of November 6, 1947 (Exhibit 475). The latter two meetings were largely taken up with discussions about the 1948 Waterproof Range.

(b) British

At the sales managers' meeting of June 6, 1946 when the majority of the Companies agreed to adopt the Post-War Waterproof Range and Programs, British is reported to have reserved its decision (Exhibit 12). It appears not to have attended the next three meetings (Exhibits 132, 110, 109) and at the next meeting on October 3, 1946 (Exhibit 205) T. Y. O'Neill of Miner reported that British had advised "they were not prepared to adhere to the post-controls waterproof footwear plan." At the presidents' and general managers' meeting of February 27, 1947 British was represented by Stuart McLean who expressed the hope that the meeting would feel free to air

criticisms of British because British was anxious to cooperate "up to a certain point and would give serious consideration to the views of the other companies up to that point. In this connection, he stated that the British Rubber Company would like to be kept aware of what is being done by the rest of the industry so that it might avoid taking steps, in ignorance, disturbing to the other companies" (Exhibit 66). At a sales managers' meeting held on March 6, 1947 when the minutes of the last mentioned meeting were reviewed, the question of cooperation with British was discussed and A. J. Minister of Goodrich reported that he and C. M. Mather of Gutta Percha had had a long conversation with Mr. Stuart McLean on the subject. He reported Mr. McLean to have said that British was anxious to cooperate with the rest of the industry as far as it could do so without unduly hampering itself and for this purpose would like to receive copies of the minutes, although it was doubtful if it would attend. The minutes go on to record that in the discussion which followed, there was general agreement that the Group should do everything possible, within reason, to induce British to cooperate and that a further effort should be made to have British attend meetings and that Mr. McLean should be given a copy of the 1947 range with details of the merchandising program and prices of new lines (Exhibit 207).

British did attend subsequent meetings; for example, Mr. McLean attended, by invitation, the sales managers' meeting of May 8, 1947 (Exhibit 300) where he explained that a recent sale of "City Boots" made by British in Montreal had been inadvertent and he "expressed regret that the incident had happened and assured the group that it would not occur again." At that time the Group had not recommenced production of this particular type of boot due to the unsatisfactory price at which it would have to be sold in the light of the Group's undertaking not to increase prices for at least three months after decontrol and due to the shortage of more essential types, and the Group was in hopes that the City Boot would not be manufactured, either, for the time being, by companies outside the Group. Mr. McLean stated that British did not intend to change the staple range of footwear although it might occasionally be forced, by circumstances, to substitute fabrics; he asked anyone who thought British was out of line with the industry's program to call him and let him know; he did not expect to attend meetings regularly but would like to be kept fully posted as to industry activities; and he reiterated that British had no intention of doing anything disturbing to the industry and would do its utmost to cooperate. C. M. Mather thanked him and urged him to attend meetings regularly and Mr. McLean then agreed to attend a number of meetings at least (Exhibit 300).

British attended sales managers' meetings held on June 5, 1947 (Exhibit 928) and August 7-8, 1947 (Exhibit 926) and, from time to time, received Group communications (Exhibit 930 and 89).

The effect of the foregoing and other evidence is that Bata and British were inclined to refrain from activities that might upset the Group arrangements and for this purpose cooperated up to a point but did not permit themselves to be drawn into the framework of the Group arrangements.

M. Review of Post-Control Evidence

The purpose of this Part has been to describe the operations of the rubber footwear industry at the time when this enquiry was commenced and such actions prior or subsequent to that time as show a similar pattern of behaviour and are in any way relevant to, or of assistance in appraising, such operations.

The pre-control history of the rubber footwear industry indicates, for many years back, not only a strong tendency toward the elimination of competition in favour of cooperative merchandising practices, but also, from time to time, a substantial degree of success in achieving that end. This is not a case where companies were originally taught cooperative habits under price controls and then found themselves under investigation after the formal knots had been untied but before they could shake themselves free of their fetters. On the contrary, there is every indication that, at the time of this investigation, the arrangements in question were directed against the future as a deliberate policy and did not owe their origins to wartime controls and were not intended only as transitional measures. In view of the submissions made to the effect that the things done by the Companies were done in pursuance of wartime control policies and had no significance except in connection with controls or the transitional period thereafter, it seems desirable to review certain of the evidence, some of it already referred to, which is relevant to the intentions of the Companies in this regard.

In the memorandum dated October 20, 1944 addressed to representatives of Dominion, Miner and Goodrich and entitled "POST-WAR PRICES AND TRANSPORTATION ON RUBBER FOOTWEAR", C. D. Pequegnat of Kaufman wrote:

"At one of the initial meetings of the Post-War Planning Committee, I suggested that the Committee consider the possibility of adopting one list price for Canada and all merchandise be shipped on an F.O.B. factory basis. The subject has been discussed at several meetings and up to the present there has been a difference of opinion as to whether the change is both desirable and feasible.

...

(Exhibit 362)

The minutes of a sales managers' meeting on April 4, 1946 contain an item to the effect that T. Y. O'Neill reported that the Post-War Planning Committee had drawn up certain plans for consideration by the industry with a view to having the industry prepared to meet the situation when production and price controls were lifted. The minutes continue:

...

... He felt that the pre-war multiplicity of lines was a wasteful practice which the industry should avoid in the future by agreeing, in advance of the removal of production controls, upon a standard and restricted range. He emphasized that any agreement reached along these lines must and would be sufficiently broad and flexible to permit the individual companies to accept it and abide by it without prejudice to their own particular interests.

...

(Exhibit 133)

With the exception of Mr. Ford of Cambridge all those present concurred with Mr. O'Neill and it was agreed that the Post-War Planning Committee should submit a proposed post-war range for consideration at the next regular meeting. Mr. Ford felt obliged to consult with another official of his company.

The minutes of a sales managers' meeting on May 2, 1946 referring to the recommendations of the Post-War Planning Committee, stated:

" . . .

Post-War Planning Committee: Mr. O'Neill reported that the Post-War Planning Committee had met and drawn up a proposed range of waterproof footwear to be adopted by the industry (1) when production controls are removed and (2) when price controls are removed. (See copy attached, which is revised as agreed at this meeting.) He explained that an effort had been made to keep the range down to an economic length, without placing undue restrictions on the initiative of the various companies.

. . . "

(Exhibit 936)

The minutes of a sales managers' meeting on March 3, 1947 contain the following lines:

" . . .

FOOTWEAR JOBBERS' LIST: In order to facilitate the preparation of a complete up-to-date list of footwear jobbers, it was agreed that all companies should submit lists of the jobbers to whom they have been selling to the Secretary for consolidation into an industry list.

. . .

REVIEW OF CLASSIFIED ACCOUNTS LIST: It was agreed that nothing can be done about revision of the Classified Accounts List while footwear remains subject to price control." (Italics supplied)

(Exhibit 207)

The minutes of the sales managers' meeting held on April 10, 1947 (Exhibit 91) record that the consolidation of the 1947 "waterproof Range and Program sent out by the secretary of the Association was reviewed and approved with certain changes. Subsequent minutes and correspondence indicate like agreement upon successive canvas and waterproof ranges well into 1948 by which time, due to this investigation, minutes of meetings had ceased to be available.

The minutes of the sales managers' meeting on May 8, 1947 contain the following item relating to the Footwear Jobbers' List:

"The meeting then reviewed the consolidated list sent out by the Association and made a number of changes. (See revised list attached)."

(Exhibit 300)

The minutes of this meeting, as do those of subsequent meetings in June, July and August, indicate joint action in respect of the classified accounts list.

The unexpurgated minutes of this meeting also contain the following item:

"CLASS 200 & 201: It was remarked that Acton are selling Classes 200 & 201 with sock-savers, at the regular price without any mark-up although an old industry agreement calls for a 10-cent extra charge for sock-savers.

In reply, Mr. Lambert stated that for years they had built these numbers with sock-savers as their regular standard construction without making any extra charge. They had commitments to deliver on this basis and could not charge the extra on these commitments. He agreed that the extra charge would be made in the future."

(Exhibit 300)

A letter of June 12, 1947 from the general sales manager of Kaufman to Kaufman's Montreal office, refers to an account who is receiving discounts not in accordance with the industry pattern, and states:

". . .

. . . Our arrangement really is wrong as he is getting a 14% discount on his own retail purchases and when we open up the season 1948, we will have to line up with other companies and sell him according to terms set up by the industry.

. . ."

(Exhibit 151)

The subject of payment of transportation charges was discussed at the sales managers' meeting of July 3, 1947 and the view was expressed that the situation was in need of review:

". . .

It was agreed, therefore, that the Fact-Finding Committee should be requested to study the whole freight problem, including such aspects of it as equalization points, pre-pay points, etc., and to submit to the Group as soon as possible recommendations for a set-up suitable to normal supply and selling conditions. (*Italics supplied*)

. . ."

(Exhibit 770)

On August 1, 1947 the manager of Kaufman's Regina branch wrote to Mr. Pequegnat about an account that had opened a branch additional to those in respect of which it was listed in "Class G". Mr. Pequegnat replied in respect of the new branch on August 12, 1947:

". . .

The above will have to be cleared with the Association so that if they are entitled to Class 'G' discount, they can be listed by all Companies."

(Exhibit 155c)

On August 18-19, 1947 C. M. Mather of Gutta Percha and A. J. Minister of Goodrich exchanged letters in which Mr. Minister criticized Mr. Mather for not falling in line with the other companies by maintaining only one warehouse in the Maritimes and Mr. Mather replied explaining Gutta Percha's difficulty and affirming that:

" . . .

. . . it is not our intention to create any situations which would cause a lack of confidence amongst the other members.

. . ."

(Exhibit 16)

On October 28, 1947 J. G. Prout of Cambridge wrote to senior officers of the Cambridge companies:

" . . .

Our proposed 1948 Canvas line has a substantial percentage of directly competitive items, and we do not believe it reasonable at this time to work on a generally announced differential price, as for some years we have been a party to a gentleman's agreement against price cutting, and with the elimination of substantial export markets in 1948, our company might be more vulnerable, if price cutting competition is precipitated, than those companies who have been exporting a substantial part of their production and in 1948 will have surplus capacity.

. . ."

(Exhibit 632)

Mr. Prout said about this exhibit in evidence:

"A. Well, in the first place, I would like to point out that my letter was purely internal -- purely an internal communication to the head of our company,

Q. I understand that.

A. And that my terminology there is couched in language that I felt would be perfectly well understood with him -- or by him. In the first place, we have no agreement of any kind with anybody.

. . .

A. . . .

Now, my letter to Mr. MacPherson was written after this bickering back and forth (among Cambridge officials as to sales policy), telephone calls and discussions of one kind and another. I wanted to crystalize the thing, so I wrote this letter, here, and as I say my choice of words is, in view of what has since arisen, apparently quite unfortunate. There was not any general gentleman's agreement. By 'agreement' what I meant to convey, first of all --

. . .

A. . . . What I actually meant by that was to convey the thought, which I think is quite understandable that in those years (the control period) of sitting around the group discussing things, it is just a matter of normal, human psychology that, without any express understanding or agreement of any kind, you form, on the basis of your own knowledge and experience, and the ideas you get from these group discussions, a concept which develops into, more or less, a trade practice or industry profit (sic; 'pattern' likely intended)."

(Evidence pp.2228,2233-34)

On September 11, 1947 J.S.C. Moffitt of Kaufman's Vancouver office wrote to Mr. Pequegnat that an account had mentioned "that he had been offered an extra 4% over our present 8 $\frac{1}{2}$ %". Mr. Pequegnat replied on September 15, 1947:

". . .

If Duckworth can get 4% more than his present 8 $\frac{1}{2}$ % class discount, direct, from a line company, which I doubt he can, I would suggest that you advise him to take it -- if he can get the rubbers.

what discount he gets from British, Bata, or Cambridge, or their jobbers, does not concern us as these companies are not in agreement with us on prices and discounts. We have found in the last few years that the old line companies have been living pretty close to the letter in our agreements and there really is no reason, with the present shortage of rubber footwear, for any company to give extra discounts to get business -- they can get all they want at the regular prices."

(Exhibit 148)

Mr. Pequegnat stated in evidence that there was no agreement and that the Companies had simply continued the prices that were in effect during controls when ceiling prices tended to become actual prices and that his letter to Mr. Moffitt was "poor phraseology" (Evidence p. 548), and that "this wording in this letter is unfortunate" (Evidence p. 549).

The minutes of a sales managers' meeting held on September 12, 1947 contain the following item:

"JOBBER'S LIST:-The following jobber was added to the list of regular stock-carrying footwear jobbers:-

Paul Marchand, Ste. Rose (Montreal) Quebec."

(Exhibit 477)

The minutes of the sales managers' meeting of January 8, 1948 contain the following paragraph:

"1. The recent visits of representatives of Mr. F. A. McGregor's office to Rubber Footwear Plants came up for discussion. In view of the fact that the joint effort of the Industry has been to eliminate

wasteful practices in production and distribution with a resultant favorable effect on price levels, it was the general conviction that Industry meetings should be continued."

(Exhibit 765)

On March 23, 1948 J. G. Prout of Cambridge in writing to other officers and employees of Cambridge on the subject of Cambridge producing a particular type of boot, said:

". . .

In the first place, all companies in the Rubber Association Group agreed that no Brigade Boots would be made for the 1948 Fall placing season with Strap Brigade Boots. In the second place, the question of making such boots for Fall was again specifically brought up at the monthly meeting held in Montreal on March 2nd and each company was placed on record that they would not manufacture such boots, after Mr. A. J. Linister, the head of the Footwear Division of Goodrich Rubber Company, stated that his Company holds for Canada a design patent on the Pull-Over Boot with Strap and Buckle over the ankle, originally made by them under the name of 'Flight Boot'.

Now, whether we like it or not, we have been since 1941 members of the Rubber Association Group, which includes all companies in Canada, except British Rubber Company and Bata. Up to this year, it was decidedly to our advantage to continue in the Group as the benefits gained far outweighed any handicaps.

". . .

We cannot as a company, through me as its recognized and official representative in Canada, simply drop in the waste basket commitments and agreements we have made without establishing a name for shady dealing that will spread through not only the rubber footwear industry, but the retail trade as well. I wish that Mr. Small was correct in his opinion that if we made the shoe previously, no patent regulation would prevent us from making it at the present time. If this were true, then no patents would stand for rubber footwear or anything else. From a legal standpoint, our understanding is that if Goodrich made this boot prior to other Canadian companies and registered its patent and got an official okay from the patent office, they could certainly make things extremely difficult for any company violating their patent.

". . .

It is my expectation to present to Mr. MacPherson, who will return April 1st, a complete survey of our waterproof situation for Fall, and from a letter which I received from him just before he left for a short vacation, I know that he will want to go into this matter with Mr. Kroto and myself, as we all feel that a revision of our policy is necessary. At the time this matter of Radar Boot and Industry Agreement will come up for discussion and if there is any change from the way I feel under present conditions we must operate, you will be advised without any delay.

". . ."

(Exhibit 633)

In giving evidence before the Commission Mr. Prout said:

"A. There are two clerical errors which I should like to clarify.

Q. I noticed that?

A. In the first place, where it says the 'Rubber Association group' it should have read Rubber Sales Managers' group. In other words, it is not restricted to the Association. It is a group of sales-managers who were in contact all during the control period for their companies and continued to sit.

BY THE DEPUTY COMMISSIONER:

Q. By that, you mean the group whose meetings are recorded in the various minutes here?

A. Yes, they are not limited to an association group.

BY MR. MARTIN:

Q. -- agreed that no brigade boots would be made for the 1948 fall placing season with strap brigade boots.

A. It should read 'with strap construction', it should not be brigade boots."

(Evidence p. 2237)

On May 17, 1948 C. M. Mather of Gutta Percha wrote to P. H. Charest of Alfred Lambert:

"Please be advised that J. Daoust, 817 St. Catharine St. East, Montreal, Quebec, has been moved from Class G 8 $\frac{1}{2}$ % to Class F 9%."

(Exhibit 454)

C. M. Mather was the Chairman of the Footwear Group meetings to which office he had been appointed for an indefinite period at the meeting of March 6, 1947 (Exhibit 207). It would appear that after G. B. Smith ceased to act as Secretary to the Group, apparently as a result of this investigation, certain secretarial functions also fell upon Mr. Mather. The following, among other documents, was received in evidence from Gutta Percha. It bears no heading:

"June 29th, 1948.

Bata Rubber Co. is making a Women's City Boot in a bright varnish finish.

Class 104 Sporting Height will be added to the regular range on a made-to-order basis.

Transportation matters are still under review.

The subject of imports from Czechoslovakia will be reviewed when further information is available.

Cambridge are making Misses' and Childs' Class 603, and this class will be considered for the Spring of 1949.

Copies of the chart of heel heights have been given to the Canadian Shoe Manufacturers' Association.

We will not be advertising in the C.S.R.A. Monthly Market Report. This will be given consideration in three or four months.

Consideration is being given to adding a 12" Brown Blucher Lumberman to the regular range.

In Tennis, Class No. 926 and 930 for 1949, the Burgundy and Natural colours will be discontinued and Red and White will be added. Any other three optional colours may also be used.

Some new construction Tennis shoes for 1949 will be delivered in September, 1948, about the time that school opens.

We expect to open the placing trip for Tennis Footwear on September 13th.

We express our sincere thanks to Mr. H. J. Ross for his generous hospitality.

The following changes have been made on Class No. 926 and 930. In place of two optional colours, there will be three optional colours, as well as the four standard colours.

On Class 904 we will be making a Little Gents Oxford Brown.

The changes noted above should be added to the chart of construction details."

(Exhibit 114)

C. M. Mather of Gutta Percha gave evidence in respect of a group of documents including Exhibit 114, as follows:

"THE WITNESS: You want me to identify these?

BY MR. MARTIN:

Q. Can you identify those documents?

A. I do.

Q. Where did those documents come from?

A. I had them myself,

...

Q. . . . Those exhibits 92 to 117 record the minutes of the sales managers of the company engaged in the manufacture of rubber footwear for what period of time? Do they start before or after controls? They are all after controls, are they not?

A. No, some were during.

. . .

Q. There are a few 1946, too? I think you told me that since last September or October there had been no meetings of the sales managers of the rubber footwear companies, but you have engaged in informal discussions?

A. That is correct.

. . .

THE DEPUTY COMMISSIONER: . . . Before we leave Exhibits 92 to 117, I understand you were chairman of these meetings?

THE WITNESS: Most of them after Mr. O'Neil left.

BY THE DEPUTY COMMISSIONER:

Q. You were present at many previous meetings before Mr. O'Neil left?

A. Oh, yes.

Q. Would you say, Mr. Mather, I do not want to press you on this subject at all, but would you say that the minutes are, so far as you know, a true and accurate report of what took place at the meetings?

A. I would. There is the occasional thing, that is, something you do not interpret the way they put down."

(Evidence pp.383-86)

Previously the witness had stated:

"Q. Then, Mr. Mather, I would ask you to look at Exhibit No. 92. That purports to be a minute of a meeting of sales managers of the Canadian rubber footwear manufacturers in the Mount Royal Hotel on Friday, September 12, 1947. I see several matters discussed there. I want to know from you: are there any minutes of any meeting since then, September 12, 1947; have there been any minutes of sales managers of the Canadian rubber footwear manufacturers since then? Is that the last minute you have -- that of September 12, 1947?

A. Yes; there have been informal discussions.

Q. Were they reduced to minutes?

A. I beg your pardon?

Q. Similar to these?

- A. No, there were not any minutes, I do not think. There may have been notes made."

(Evidence p. 358)

It therefore appears very reasonable to infer that Exhibit 114 is related to an industry meeting held in June 1948 at which the topics contained in the Exhibit were discussed and, upon some of them, agreement reached.

N. Comment

Giving due weight to the views of the various witnesses as to the extent to which they were or were not bound by the relationships described in this Part, the conclusion seems inescapable that such arrangements come within the terms of the Combines Investigation Act which embraces not only formal and written agreements in restraint of competition, but an "actual or tacit contract, agreement or arrangement" having the restrictive effects described in the Act. Having regard to the common discount structure and the common steps taken to maintain it, the fact that prices agreed upon may from time to time have been prices formulated by the leading company, does not detract from the essential nature of the arrangement.

While it also appears clearly from the foregoing that the arrangements entered into by the Companies cannot reasonably be explained upon the basis of wartime control or of orderly decontrol, it should be added that controls necessarily eliminated for a time most of the factors upon which competition is based. Production and distribution were limited and directed; range and quality were controlled; "know-how" was freely and properly exchanged; certain raw materials were purchased jointly; and ceiling prices were set which, under pressure of a buoyant demand, normally tended to become actual prices. Had the Companies never held meetings or desired to hold them before the war, there would, of course, have been complete justification and necessity for holding them during the war in order to further the letter and the spirit of wartime control policies. The minutes of meetings during this period record many joint actions not referred to in this Report which served these policies and to which no censure but rather credit should attach. Indeed not all of the joint measures mentioned in this Part were, in themselves, objectionable. In some instances such measures have been described, not for their individual significance, but to show that there was in fact a pattern of uniform range and procedure upon which other measures of joint action that had no control or decontrol significance were erected to bring about a non-competitive uniform price structure. In short, what is objected to in this Part is not any particular action but the common price structure to which all the joint actions discussed herein contributed and which, for many of them, was the only purpose.

PART VI - HEELS AND SOLES

Chapter 1 - Introduction

A. Scope of the Report

This Part of the Report deals with rubber heels, soles and slab soling, and covers the activities, from 1936 to 1948 inclusive, of the principal companies which produce for sale to shoe manufacturers and the shoe repair trade. Heels and soles made by some other manufacturers for incorporation in their own footwear are not covered.

The supply of rubber heels, soles and soling with which this Part deals, while an important, is not a proportionately large part of the rubber industry as a whole. In 1948 there were only four large manufacturers of such heels, soles and soling in Canada and of these only two depended upon such as their main products. According to the annual report on the rubber industry in Canada for 1948, published by the Dominion Bureau of Statistics, the total value of production in that year of rubber and composition heels, soles and soling amounted to approximately \$3 $\frac{1}{4}$ million. The nature of the product does not give the industry much scope for measures to increase the overall demand, and the industry, in such matters as patterns, is governed to a large degree by the policies of the footwear manufacturers.

The time covered by this Part of the Report may be divided into three parts, which will be considered hereafter as the Pre-Control, Control and Post-Control periods.

B. Products Manufactured

Rubber heels and soles need no definition. Slab soling consists of rubber slabs, also called strips, which are purchased by shoe manufacturers and shoe repairmen for cutting into heels and soles for shoes. Slabs are, of course, cheaper to produce than individual heels and soles. It was stated in evidence by one manufacturer that three qualities of product were manufactured: one for sale to shoe manufacturers, one for sale to the shoe findings trade, and one for sale to various retail chain stores, and that, generally speaking, the quality sold to the shoe findings trade was the highest, and that to the retail chain stores was the lowest of the three. Two of the Companies manufactured premium quality lines for the shoe findings trade. The shoe manufacturers provided the greatest volume of business.

For many years rubber and leather were the only real alternatives for heels and soles. In recent years soles and soling made of non-rubber compositions have been brought into production and at the time of this investigation had acquired considerable prominence but had not reached the stage of being general substitutes for rubber or leather.

C. Companies in the Industry

In 1948 the following companies were engaged in the heel and sole industry:

Panther Rubber Co. Ltd. - This Company produces heels, soles and soling for shoe manufacturers and for the shoe findings trade.⁽¹⁾ The plant is in Sherbrooke, P. Q.

The Holtite Rubber Company of Canada, Ltd. - This Company produces heels, soles and soling for shoe manufacturers, the shoe findings trade and chain stores. The plant is in Drummondville, P. Q.

The Goodyear Tire & Rubber Company of Canada, Limited - This Company produces heels, soles and soling for shoe manufacturers and for the shoe findings trade. The plant is in St. Malo, P. Q.

The Miner Rubber Company Limited - This Company manufactures heels, soles and soling for shoe manufacturers only. The plant is in Granby, P. Q.

G. L. Griffith & Sons Ltd. - This Company produces a comparatively small amount of soles which it sells chiefly to hardware dealers and chain and department stores. The Company also acts as a jobber for heels and soles produced by one of the other companies. The plant is in Stratford, Ontario.

Five other companies were engaged in the industry during part of the period covered by this Report but had ceased production before the beginning of this investigation. These companies were:

Dominion Rubber Company, Limited of Montreal, P. Q., at one time one of the largest manufacturers. It ceased production in 1945.

Gutta Percha & Rubber, Limited of Toronto, Ontario, which dealt mostly with the shoe findings trade. It ceased production about 1938, although sales were continued on a considerable scale until 1942.

Viceroy Manufacturing Company Limited of Toronto, Ontario, which dealt solely with the shoe findings trade. It ceased production in 1944, although some sales were made until 1947.

The Canadian General Rubber Company Limited (herein called "Canadian General Rubber") of Galt, Ontario, which sold only to shoe manufacturers. It ceased production in 1944 and later merged with Tower Canadian Limited to form Canadian General-Tower Limited, which does not produce heels and soles.

The Trafalgar Rubber Company Limited (herein called "Trafalgar") of Toronto, Ontario, a small company which went out of business around 1940.

Of the five companies in the industry in 1948, two, Panther and Holtite, were engaged mainly in the manufacture and sale of heels, soles and slab soling. All except Miner supplied the shoe findings trade, and all except Griffith sold to shoe manufacturers. Only two of the Companies, Holtite and Griffith, distributed to chain stores. Griffith was a small factor in the industry, the president of the company having stated at the

(1) Sales directly or indirectly to shoe repairmen.

hearing that their sales volume never amounted to more than \$10,000 in any year. During the period 1936-1948 other manufacturers of rubber products have from time to time manufactured and sold heels, soles and soling, but their production was sporadic and comparatively small. Between 1945 and 1948, both years inclusive, sales by these other manufacturers were always less than 3 per cent of the total sales in any one year. They will not be considered further in this Part.

D. Production, Imports and Exports

The following table contains figures showing the sales value of the annual production, including exports, of the heel and sole industry between the years 1938 and 1948. The figures in column 2 were obtained from returns by the above-named companies with the exception of Trafalgar, and represent the total sales of these companies. The figures in column 3 were obtained from an annual publication of the Dominion Bureau of Statistics called "The Rubber Industry", and represent the annual production in Canada of heels, soles and soling in terms of the selling value at the works. The figures in both columns for the latter years, particularly 1947 and 1948, include some composition products other than rubber, which it has not been possible to segregate.

Table I

Selling Value of Rubber Heels, Soles and Soling Manufactured in Canada

1	2	3
Year	Total Sales	Selling Value
	Company Returns	at Works D.B.S.
	\$	\$
1938	1,237,313	1,330,621
1939	1,590,750	1,709,384
1940	1,404,147	1,467,772
1941	2,047,350	2,224,627
1942	1,011,258	924,959
1943	955,426	958,690
1944	2,046,119	2,203,251
1945	2,510,141	2,682,214
1946	2,995,688	3,217,905
1947	2,619,984	2,247,432
1948	3,325,725	3,223,587

Obviously the figures given to the Dominion Bureau of Statistics and those given to the Commission were compiled upon a somewhat different basis, because for the years 1942, 1946, 1947 and 1948 the D. B. S. figures for the whole industry were less than those contained in the Companies' returns to the Commission. Making ample allowance for this discrepancy, the figures leave no question as to the dominating position in the industry of the companies represented in column 2. A witness at the hearings, who had been sales manager of Miner from 1926 to 1947, stated that the only other manufacturer of which he knew was a small firm selling to the chain stores.

In the year 1948 the four companies, Holtite, Goodyear, Panther and Miner, accounted for the following proportions of their total sales according to returns submitted to the Commission: 4 per cent, 17 per cent, 25 per cent, 54 per cent. The order of the figures does not necessarily correspond with the order in which the Companies are named.

The following table indicates approximately the proportions of sales to shoe manufacturers and the shoe findings trade, and the total exports for the year 1948 as derived from returns submitted by the Companies to the Commission. Goodyear was unable to submit a breakdown of domestic dollar sales and the figures shown for that company are in proportion to an estimated breakdown of sales in units shown on their return. The Companies included in the table are Miner, Panther, Griffith, Goodyear and Holtite.

Table II

Sales of Heels, Soles and Soling - 1948

To Shoe Manufacturers	\$2,733,485
To Shoe Findings Trade	579,927
Exports	<u>12,313</u>
Total Sales	<u>\$3,325,725</u>

The following table contains the total imports into Canada by dollar value of heels only, from 1938 to 1948. All imports were from the United States. Import figures for soles and soling are not available for the same period. The value, however, of soles and soling imported in 1951 was \$285,975. On the basis of the figures for the first six months of that year it appears that about 35 per cent was crepe soling imported from the plantations. A witness stated at the hearing that a portion of the heel imports was purchased by the heel and sole manufacturers themselves from parent companies in the United States. The duty on rubber heels and soles imported from the United States is 20 per cent.

Table III

Total Imports of Rubber Heels

<u>Year</u>	<u>Amount</u>
1938	\$2,882
1939	5,013
1940	6,957
1941	6,407
1942	3,385
1943	291
1944	495
1945	528
1946	7,480
1947	6,574
1948	44,697

E. Channels of Distribution

The four main classes of customers supplied by the heel and sole producers are shoe manufacturers, jobbers, repairmen and retail chain stores. The second and third classes are known in the industry as the "shoe findings" trade.

Sales to shoe manufacturers are ordinarily handled direct by the producers. Manufacturers' price lists are issued setting out the prices to be charged and they do not provide for any discounts other than for cash, although in some instances as will be seen, confidential discounts have been given. In the shoe findings trade the manufacturers deal chiefly with the jobbers, although some sales are made direct to repairmen. The jobbers, who sell to the repairmen, are sometimes also called jobber-distributors or distributors. Jobbers' price lists are issued which are subject to trade discounts including a cash discount. In the case both of shoe manufacturers and the shoe findings trade, separate prices on some products are given for eastern and western Canada, the dividing line being Fort William.

In 1948 the industry recognized three classes of customers in the shoe findings trade, each of which was entitled to certain discounts from list prices: (1) Jobber-Distributors and Local Jobbers, who handled shoe findings materials for the purpose of supplying the repair trade; (2) Accommodation Jobbers, who were wholesale accounts, such as wholesale hardware firms, selling shoe findings materials as a convenience for their customers; (3) Shoe Repairers, who usually purchased through jobbers at list prices, although some of the larger repairers were entitled to certain quantity discounts on direct shipments.

The chain stores, i.e., large retail variety stores such as Woolworth's, Kresge's, etc., purchased some heel and sole products direct for resale to the consuming public. Little evidence was given at the hearing regarding the chain store trade and it will not be considered further in this Part. Only Holtite and Griffith sold to the chain stores and the Holtite witness estimated that the chain store trade only amounted to from 2½ per cent to 4 per cent of Holtite's business in heels and soles.

F. Organization of the Heel and Sole Group

The following companies have at relevant times been members of The Rubber Association of Canada (described at p. 10, herein also called the "Association"): Panther, Holtite, Goodyear, Miner, Dominion, Gutta Percha, Viceroy, Canadian General Rubber and Griffith. Trafalgar was not a member of the Association but did attend meetings of the Heel and Sole Group prior to 1940. Griffith, although a member of the Association, never attended any meetings relating to the heel and sole industry.

These Companies, except Griffith, constituted a division of the rubber industry known as the Heel and Sole Group. The Group held meetings throughout the period covered by this Report on an average of about four times yearly, and the meetings were quite regularly attended by all the companies currently manufacturing. The meetings were held

either in the offices of the Association in Toronto or at a hotel in Montreal. The chairman of the meetings was usually a member of one of the Companies. The secretary was provided by the Association, being the late A. B. Hannay, who was Manager and Secretary of the Association until 1944, and after that, G. B. Smith, who presently holds these offices. The duties of the secretary included the preparation and distribution of the minutes of meetings, the compilation of various statistics relating to the industry, and other matters which will be described in the succeeding paragraphs of this Part.

Chapter 2 - The Pre-Control Period

A. General

While it was indicated during the course of the formal hearings that meetings of the Companies engaged in the heel and sole industry were held as early as 1923, the documentary evidence upon which the witnesses were examined goes back only to 1936. The evidence dealing with this branch of the rubber industry will be considered in relation to three separate periods, that is, from 1936 to 1941, from 1941 to 1947 when the industry was under wartime controls and the period following suspension of such controls.

In the pre-control period ten companies were engaged in the manufacture and sale of heels, soles or soling:

Canadian General Rubber
Dominion
Goodyear
Griffith
Gutta Percha
Holtite
Miner
Panther
Trafalgar
Viceroy

Gutta Percha and Trafalgar, as has already been noted, ceased production in this period, Gutta Percha about 1938 and Trafalgar about 1940, although the former continued to be engaged in the sale of its stocks for several years after ceasing production.

All the companies listed above with the exception of Griffith were represented at meetings of the Heel and Sole Group. The minutes record a considerable number of agreements relating to the production and sale in Canada of heels, soles and slab soling, the nature of which will be outlined in the following sections.

Long before 1936 the heel and sole manufacturers had recognized the four broad classes of customer already mentioned: shoe manufacturers, who purchased heels and soles for incorporation in their shoe products; wholesalers (jobber-distributors and dealers), who resold to the repair trade; shoe repairmen, who usually purchased through jobbers; and retailers who resold to consumers who wished to repair their own footwear.

The practice had been adopted of issuing separate price lists applicable to the first two classes. Prices to repairmen were sometimes fixed on the basis of a percentage mark-up over the wholesale list prices, at other times were fixed directly as list prices for repairmen, and at still other times and in certain territories were determined by the jobbers. Later it was the practice to sell to shoe repairmen at wholesale list prices less certain quantity discounts.

B. Arrangements Relating to Shoe Manufacturers

(a) Prices

With the exception of Viceroy, Griffith and Gutta Percha the Companies named above sold to shoe manufacturers during this period. The minutes reveal that representatives of certain of these Companies met together from time to time throughout the period and agreed upon uniform prices at which heels and soles were to be sold to the shoe manufacturers. The extracts from the minutes which follow are typical of the agreements reached at these meetings.

At a meeting held in Toronto on January 13, 1937 attended by representatives of Dominion, Holtite, Miner, Goodyear, Viceroy, Panther, Gutta Percha, Trafalgar and Canadian General Rubber, (1) prices for heels supplied to shoe manufacturers were agreed upon, and a list was attached setting out the prices to be charged for various types and sizes of heels. The list contained separate prices for eastern and western Canada, the difference being largely the extra freight for western shipments. The following extract is from the minutes of this meeting:

"Prices to Shoe Manufacturers: New prices were set for equipment heels supplied to leather-shoe manufacturers, effective January 13th, 1937. However, it was agreed that orders may be taken up to and including January 30th, 1937, on the prices in effect January 12th, 1937. Any orders so taken up to January 30th, 1937, must be shipped by March 13th, 1937, in order to take the January 12th prices.

Prices of soles and slabs to shoe manufacturers were not changed."

(Exhibit 846A)

Incorporated in the minutes is a list of prices for the products referred to.

At a meeting held in Montreal on June 14, 1937 representatives of the various companies agreed upon a general price revision for shoe manufacturers. The following extract is from the minutes of this meeting:

"Prices to Leather Shoe Manufacturers were changed for heels, sport-heels, flat-soles, spring-heel soles, half soles and sheet soling. New prices were made effective June 15, 1937. No further orders

-
- (1) Subsequent quotations from minutes will not detail the Companies which were represented at the meetings. Minutes were obtained of 21 meetings held between June 9, 1936 and July 31, 1941. The number of meetings attended by each company was as follows: Dominion 21; Holtite 17; Miner 18; Goodyear 21; Viceroy 19; Panther 21; Gutta Percha 13; Canadian General Rubber 17; Trafalgar 7.

are to be taken at prices that were in effect on June 14th, and orders taken at prices in effect to that date are to be delivered at those prices only for 30 days. Orders at prices of June 15th are to be delivered within 60-days."

(Exhibit 843A)

The minutes contain a price list for shoe manufacturers containing prices for the various sizes of heels and soles mentioned in the above extract.

In the minutes of a meeting held in Toronto on June 2, 1939 there is another reference to an agreement relating to heels and soles sold to shoe manufacturers. The relevant extract from the minutes is as follows:

"Prices: The following prices to leather shoe manufacturers for rubber and composition heels, soles and slabs were set up, effective June 2nd, 1939:"

(Exhibit 742)

The price list which in other cases was usually incorporated in or attached to the minutes does not appear in this copy, but it is a reasonable inference that it was attached to the original.

At a meeting held in Montreal on May 7, 1941 representatives of the Companies agreed upon a general price increase of 10 per cent for all types of heels, soles and slabs to shoe manufacturers. The relevant extract from these minutes is as follows:

"It was pointed out that the last general revision of shoe manufacturer's list prices for heels, soles and slabs was made in September, 1939. At that time the price of crude rubber was around 16¢ per pound, while to-day it costs around 25¢ per pound to lay down rubber at a Canadian factory. Prices of other materials have risen and the cost of production has been increased, also, by advances in wage rates and taxes. Competition and desire of manufacturers to increase the volume of their sales have resulted in price concessions of 10% or more to many accounts. For these reasons it was stated much business was being done at a loss.

It was agreed

- (a) That list prices should be advanced by approximately 10%;
- (b) That off-list discounts may be continued, and where there now may be off-list prices quoted, these will be changed to a discount off-list and the accounts sold at such discounts from list rather than at special net prices;
- (c) New list-prices will be in effect as of May 7th, 1941;
- (d) New orders will be taken only on the basis of the new list-prices;
- (e) Prices are subject to change without notice, and subject to change in event of any tax increase;
- (f) Definitely specified orders may be accepted for delivery within 60 days. However, in the event of an increase in price, companies will ship definitely specified orders within 30 days from date of such price increase, and all orders are to be accepted on such

understanding. Failing acceptance by customer of any unfilled orders within 30 days from date of price increase, such unshipped balances will be automatically cancelled;

- (g) Manufacturers' prices do not include sales tax, and are to be quoted only to shoe manufacturers giving license number;
- (h) Each heel manufacturer will immediately send to the Association office a list of the leather shoe manufacturer accounts with which it has commitments for the delivery of heels, soles or slabs, stating the quantity of each article under commitment and when it is expected that such commitments to each such account will be completed by deliveries. When commitments to an account are completed the Association office is to be notified. When a heel manufacturer has cleaned up all his commitments that are outstanding to-day, he will notify the Association office;
- (i) In each case, where it is reported to a company that another heel company has taken an order from or quoted a customer prices, discounts or terms to which such account is not entitled, the manager or sales manager of the company receiving such report will enquire as to its accuracy direct to the responsible officer of the company reported against. Such enquiries are to be promptly and correctly answered.

Next Meeting will be in Toronto, Wednesday, June 11th, 1941, when consideration will be given to

- (a) Discontinuance of the granting of discount for cash;
- (b) Prices of camp-soles to shoe manufacturers;
- (c) Prices to the jobbing and the repair trade;
- (d) Differential in price between black and tan colors on heels only."

(Exhibit 603)

Attached to these minutes is a comprehensive list of prices, both east and west, for different types and sizes of heels, soles and slab soling.

At a meeting held in Montreal on July 9, 1941, representatives of the Companies agreed to continue the price and discount provisions provided for in the minutes of May 7, 1941 and also agreed upon prices for spring heel soles and moccasin soles (Exhibit 600). At a meeting held in Toronto on July 31, 1941, representatives of the Companies agreed upon price changes to shoe manufacturers for rubber heels, heel bases, and certain types of soles and soling (Exhibit 599).

(b) Oral Evidence

The extracts quoted above indicate that the Companies in the heel and sole industry reached agreements on the prices of heel and sole products sold to shoe manufacturers in Canada at meetings attended by representatives of the Companies and that the prices agreed upon were incorporated in the minutes. A number of persons who attended these meetings during this period gave evidence at the hearings about the apparent agreements which were set out in the minutes. Some witnesses denied that any agreements were made; others were unable to recall whether or not

any agreements were made; and others stated that agreements may have been made but said that no agreements were ever carried out. The following quotations from the evidence taken at the hearings illustrate the nature of the explanations which were offered.

T. Y. O'Neill, who, during the pre-control period was General Sales Manager of Miner which sold only to shoe manufacturers, was asked at the hearing if his company was a party to any agreements relating to the manufacture and sale of heels and soles. He replied that, of course, they would not be a party to any agreements regarding distribution to jobbers and the repair trade. He went on to say:

"... But over a long period we did meet and discuss various items. There is this about it that I wish to point out, that over a very long period of time, as long as I can remember, there was, in so far as prices were concerned, a very bad situation in the heel and sole business. We might have said at a meeting that certain prices were effective or that certain conditions were effective, but that was no guarantee whatsoever that it would be carried out. And I might say that that was perhaps an industry where tough competition in regard to prices was prevalent always. So that while these minutes might record an agreement, yet on the other hand I don't think anybody there had any real confidence in them ever being carried out, nor were they ever controlled or regulated by them."

(Evidence p. 1143)

G. B. Rutherford, who between 1940 and 1945 was General Sales Manager of the Mechanical Division of Dominion and who attended meetings of the Group from 1938 on, testified as follows:

- "A. There may have been a discussion about prices at these meetings, but as to any agreement, no. Someone, at one meeting, might have said the heels were sold at \$10 or 10 cents per unit and therefore I could not say there was not any discussion about prices.
- Q. Could you elaborate as to what form the discussion might have taken?
- A. No, I do not have any particular recollection which would permit me to elaborate."

(Evidence pp. 2130-31)

The explanation of A. A. Esterson, who was President of Holtite and who attended most of the meetings, was as follows:

- "Q. ... I should like to ask a general question as to whether, during this period, the 1938 period -- let us make it again the period prior to September, 1939, whether you were at any meeting where prices were discussed?
- A. No, the only way we did it, in my opinion, was this: If we went up in price we would go up in our price and we would raise it,

If they wanted to discuss that price, as to what we have done, that did not change our position any. If that is the inference, it is this one thing, if I were at that meeting, I made that statement, prices should go up, I would have raised my price. I would have already sent it up to the trade; that would be my position until such time as I changed my mind.

Q. Do you recall any case where you discussed prices before you changed the price yourself?

A. No, sir, I would change it first and then I would tell them why."

(Evidence p. 2403)

F. T. Yates, who was Manager of the Heel and Sole Department of Goodyear during this period was asked whether there were any agreements on prices, and replied:

"A. Yes, I would say there would be an understanding that we would have a certain price.

Q. That prices of similar products would be the same?

A. Yes, sir."

(Evidence p. 3031)

H. S. Ireland, at that time Secretary of Canadian General Rubber and who attended meetings during this period, denied that there were agreements, but said:

"A. Prices were discussed in connection with, largely, the specific type of sole or heel that was being produced. There are many lasts to be fitted from heels and soles, and the industry was attempting at that time to standardize in so far as possible on the type that would be supplied, to eliminate any unnecessary capital expenditure for moulds, and so on.

Q. Yes?

A. The synchronization of their respective types of heels and soles was usually accomplished by a comparison of price lists."

(Evidence p. 1971)

Mr. Ireland when asked about the agreement recorded in the minutes of the May 7, 1941 meeting (Exhibit 603) raising prices by 10 per cent stated:

"A. There was a general industry recognition of the fact that the increasing costs which were unavoidable, coming about this time, must be given recognition. There was a natural desire on the part of members of the industry to work with a reasonable degree of coordination in putting such changes into effect in order to avoid as much disruption as was possible to avoid."

(Evidence pp.2011-12)

C. M. Mather, who had been Manager of the Footwear Division of Gutta Percha since 1939, and prior to that was Assistant to the Manager of the Footwear Division was asked about an agreement recorded in the minutes of the June 13, 1937 meeting (Exhibit 846A):

"Q. . . . Do you recall whether or not at about that time there was an agreement between the manufacturers of heels and soles in Canada with respect to the prices to shoe manufacturers?

A. I recall there were discussions on prices, yes.

Q. Were there any agreements made, oral or written?

A. No written agreement, no.

Q. Was there any oral agreement?

A. Well, it says there that they set prices for manufacturers.

Q. You say there was no oral or written agreement?

A. I said there was no written agreement.

Q. I asked whether there were any oral agreements. I appreciate your company would not have much interest in it --

A. Those minutes show that prices were set to manufacturers.

Q. At any of the meetings you attended was there any agreement, either oral or written, made between the heel and sole manufacturers with respect to prices to shoe manufacturers?

THE DEPUTY COMMISSIONER: He has referred to the minutes.

BY THE DEPUTY COMMISSIONER:

Q. You recall discussions and understandings on the setting of prices similar to that set forth in the document marked . . . ?

A. I do." (Evidence pp.2539-40)

(c) Degree of Adherence

Although the minutes of meetings held during this period indicate that the Companies selling to shoe manufacturers met together and consistently agreed upon the list prices to be charged by the Companies to such manufacturers, nevertheless the evidence also indicates that the list prices decided upon at the meetings were not always observed. Throughout the minutes there are references which indicate that companies were giving special discounts from the agreed lists, and efforts were continually being made to deal with this problem. At one time it was recognized, as has been

seen, that the practice of giving special discounts was very prevalent and it was agreed to advance the list prices 10 per cent in part to absorb these discounts. Toward the end of the period the Companies appear to have come to the conclusion that the arrangement for controlling prices was not successful, and consideration was given to a new system of maintaining prices to shoe manufacturers. The following extracts from minutes of meetings indicate the efforts made throughout the period to deal with these matters.

In 1936 Trafalgar was manufacturing a low grade heel for sale to shoe manufacturers, and was apparently selling it at lower than agreed prices. This was evidently causing some disturbance in the trade and the matter was discussed at a meeting held on June 9, 1936 and the following agreement arrived at:

". . .

Trafalgar Differential: The Trafalgar Company may quote and bill Leather Shoe Manufacturers at 5% below agreed list prices set up by the Division from time to time for rubber heels, molded composition full and half soles and sheet soling; . . .

". . ."

(Exhibit 849A)

At the same time the members at the meeting made the following agreement:

". . .

Change of Prices: Agreed that hereafter no company will change agreed prices without first asking the Secretary to call a meeting for the consideration of its proposals; but such meeting must be held within a week's time after the request has reached the Association office.

". . ."

(Exhibit 849A)

At a meeting held on June 29, 1936 the following entry appears:

"SPRING HEEL SOLES: Mr. Harshman (Goodyear) stated that one company was quoting lower than agreed prices to certain accounts for Spring Heel Soles for Camp Shoes. He stated that at the next meeting it might be proposed that the prices of these should be lowered in order to conform with quoted lower prices. . ."

(Exhibit 848)

An entry in the minutes of October 21, 1936 suggests that the Companies were not satisfied with the state of the arrangements:

"Orderly Merchandising was discussed at considerable length and it was agreed that efforts to obtain acceptance of a satisfactory plan should be continued."

(Exhibit 847)

In May 1940 a situation arose which necessitated a reduction in the price of slab soling to shoe manufacturers. The following extract is from the minutes of May 9, 1940:

"Slabs for Shoe Manufacturers: It having been reported that prices other than those listed were being quoted leather shoe manufacturers on slabs, General Rubber stated that it was going to set up new competitive prices, which it would report.

It was agreed that, effective from present date, there would be a ten percent reduction of prices on soling slabs to leather shoe manufacturers; the new prices to be as follows:"

(Exhibit 532)

The minutes contain a list of slab soling prices.

In April of 1941 the Companies came to the conclusion that the pricing structure was not working out satisfactorily, and it was proposed that a new system of controlling prices should be established. The following extract is from the minutes of a meeting held on April 15, 1941 in Toronto:

"Consideration was given to the present price and merchandising situation applicable to rubber heels, soles and slabs. It was agreed that conditions were unsatisfactory. Consideration will be given to a quota plan, suggested by one of the company representatives."

(Exhibit 605A)

Attached to these minutes is the plan that was suggested at the meeting. It is as follows:

"SUGGESTED HEEL-SOLE-SLAB MERCHANDISING PLAN

By this plan, a control of sales and prices could be effected, solely on the basis of quota operation. No attempt would be made to control prices and the inducement to sell at low prices, or to indulge in unethical practices would be greatly reduced because no increase in volume would be allowed over predetermined percentage of the total, unless a penalty were paid. Each manufacturer would try to sell his share of the total business at as high a price as possible. If a manufacturer's sales exceeded his quota a cash penalty would be effective, but if, on the other hand, his sales were less than his quota, he would receive a bonus. This plan would also provide that the quotas would be revised from year to year, based on the sales by each company in relation to its quota. For instance if a manufacturer exceeded his quota by \$10,000 it might be that his quota would automatically be increased by say 25% of the excess amount of \$10,000 or by \$2,500 and the manufacturer whose sales were less than his quota would have his quota reduced accordingly.

A quota plan would be much easier to handle than a price-control program. It would be much more difficult to 'cheat' the auditors on volume production and sales than to evade them on discounts and special allowances.

The fact that the interests of a manufacturer will lie with the maintenance of prices and the acquiring of only that volume of sales represented by his quota, should be the best guarantee that prices will be maintained. In other words, that there will be no inducement for a manufacturer to cut prices in order to increase his volume of sales beyond the amount of his quota.

It will be to his interest also to make his sales equal his quota, for reduced sales would automatically reduce his quota for the following year.

To work effectively, a quota plan should be made to cover a minimum period of three years, but preferably five years, with a forfeiture of deposit if contract is cancelled before the period ends.

Deposits by all participants would be made to cover possible penalties and for making payments where quotas were not attained."

(Exhibit 605B)

There is no evidence that this plan was ever adopted but the proposal indicates that the Companies were not satisfied with the agreements that had been made and that efforts were being made to organize the industry more rigidly. It is possible that the wartime situation, by lessening the inducements to cut prices, solved the immediate problem of trying to maintain agreed prices. F. T. Yates, then of Goodyear, stated in evidence that although the plan was proposed, it was never carried out.

The agreement made at the meeting of May 7, 1941 to raise prices by 10 per cent, partly because of previous price concessions, has already been discussed. In that case the deviations from agreed practices had apparently become so numerous as to require a major revision in the over-all price structure.

In the minutes of a meeting held on July 31, 1941 there is a suggestion that the Companies had pretty well decided that they would have to put up with off-list discounts and an attempt was made to limit them to a uniform rate. The following extract is from these minutes:

"Off List Discounts, it was agreed, may be continued at existing rates to shoe manufacturers to whom they are now being given, but in no case shall a rate be increased and each Company will endeavour to establish 10% as the maximum rate for any such discount."

(Exhibit 599)

Some idea of the extent of these discounts in 1941 may be obtained from discussions relating to an order made

by the Wartime Prices and Trade Board in 1944 requiring the Companies to grant to their shoe manufacturer customers all special discounts which had been allowed them during the basic period (September 15 to October 11, 1941). The Companies had been permitted to discontinue special discounts when resumption of production was authorized on January 8, 1943 (see p. 550) but in January 1944 the Rubber Administrator, as a result of an investigation made by the Wartime Prices and Trade Board, ordered that the discounts be reinstated. The Companies disagreed strongly with the Board as to the extent of the discounts that had been given. The Board maintained that during the basic period or subsequent thereto up to February 1, 1943 "discounts were given on 80% of the rubber heels sold to shoe manufacturers" (Exhibit 747E). The Companies denied this statement. In a brief prepared by a committee of the Heel and Sole Group which was established to present the Group's side of the case, it was stated that of the total amount of sales in the basic period only 52 per cent were subject to special discount. The brief also contained figures showing that of the 156 shoe manufacturers who purchased heels and soles during the basic period, only 35, or 22.4 per cent, received special discounts on all their purchases, while 25, or 16 per cent, received special discounts on some of their purchases. The brief went on to state:

"It will be seen from the above figures, which can be substantiated, that sales at list prices, far from being exceptional, or granted only on odd sales to irregular customers were, in fact, the general rule for all five heel manufacturers, individually and collectively during the basic period. Moreover, although conditions which are alleged to have existed during the year and more subsequent to the basic period are, in our opinion, entirely irrelevant, never-the-less have been brought into the picture and used against the heel manufacturers by the Prices Division. Therefore, we are compelled to point out that discounts were being withdrawn quite rapidly during this period and that an analysis of sales during a period even a few months subsequent to the basic period should show a result considerably more favourable to the case of the rubber heel manufacturers than the analysis of basic period sales given above.

(Exhibit 971)

Although the conflicting information makes it impossible to establish exactly the extent of the special discounts, there is no doubt that they were granted and that the Companies therefore did, during the pre-control period, depart from the agreed prices. It should also be noted, however, that the volume of goods stated in the brief to be subject to special discount (52 per cent) was purchased by only about 38 per cent of the shoe manufacturers, and that the remaining 62 per cent were, according to the heel and sole companies, sold at the agreed upon list prices.

While the volume of secret discounts is clearly indicative of incomplete adherence to the agreements on uniform prices, it is equally clear that such agreements were far from ineffective. This is illustrated in the following extract from a letter of August 22, 1939 from F. T. Yates, then Sales Manager of the Heel and Sole Department of Goodyear to A. G. Partridge, President of the company, in which, after referring to price cutting by two of the members of the Group, he went on to say:

"The success of our maintaining our volume and position with gradually increasing selling prices, depends largely on the result of our efforts to bring both the Holtite and Trafalgar closer into line. A spread of a half cent per pair is a consideration to a shoe manufacturer at any time but very much more so when heel prices are generally higher. It is then that the manufacturers commence to shop around for lower prices.

By working along the lines indicated, however, I am hopeful of showing slow but steady improvement in our position. The monthly meeting of the rubber heel manufacturers is proving very helpful as it brings us much closer together and enables us to check any situation that may develop before it goes very far."

(Exhibit 758)

A circular letter, dated August 12, 1939 from A. B. Hannay, then Secretary of the Association, to all the Companies, indicates adherence to agreed prices and that collective efforts were made to maintain a uniform price structure. In his circular Mr. Hannay quoted a letter he had received from one of the Companies in which it was stated that that company had received a request from the Bata Import & Export Co. Ltd. for special quotations on 100,000 pairs of women's heels. The quoted letter went on to state:

"We are advising this Company that the prices we have quoted them are our only prices and quantity has no bearing on them. No doubt other rubber heel manufacturers have received similar requests, and we thought it might be advisable to have a letter go to all companies referring to this request for special quotation, and pointing out that we have no set-up for quoting special quantity prices as requested, and that our new prices, which became effective June 2nd, 1939, only should be quoted.

"We feel that this might have a steadying influence on the prices with regard to this particular company."

(Exhibit 296)

C. Arrangements Relating to the Shoe Findings Trade

(a) Prices and Customer Classification

With the exception of Miner and Canadian General Rubber, the Companies sold heels, soles and soling to the shoe findings trade either through the wholesale trade or direct to repairmen, or both. The greater proportion of sales to the shoe findings trade, however, was made through the wholesale trade. It is apparent from the minutes of meetings that prices to be charged by the Companies for heels, soles and soling to these classes of buyers were agreed upon by representatives of the Companies at meetings of the Group.

In so far as the wholesale trade was concerned, there were various classifications of buyers which were changed from time to time. The documentary evidence discloses that during the earlier part of the period under review separate price lists were agreed upon for the wholesale trade

and for shoe repairmen. This practice was discontinued, however, in the latter part of 1939 when one set of prices for the various types of product was agreed upon together with different discounts from these prices to which the different agreed classes of buyers were respectively entitled. The extracts from minutes which follow illustrate the classifications of the shoe findings trade and the method by which prices to each class were agreed upon in the earlier period.

The minutes of a meeting held in Montreal on June 29, 1936 contain the following entry:

"Slabs: It was agreed that for jobbers and distributors the prices for backed and unbacked slabs should be the same and that such prices will be those established for unbacked slabs of various irons and colors at the meeting of June 9th, 1936. The prices are as follows:"

(Exhibit 848)

Included in the minutes is a list containing prices for slab or sheet soling of various irons and colours for both east and west. The minutes of June 9, 1936 which were referred to, contain the following entry:

"Backing Slabs: Agreed that for slabs backed with fibre the price shall be 30¢ higher per 24" x 24" slab than for slabs not so backed and for other size slabs the advance shall be in proportion to the sizes."

(Exhibit 849A)

These minutes also contain lists of prices for distributors and dealers for heels, soles and slab soling.

At a meeting held in Montreal on June 14, 1937 representatives of the Companies agreed upon a list of prices of heels and half soles to shoe findings distributors:

". . .

Distributor Prices: Prices to shoe findings distributors were set on rubber heels and on half or tap-soles. These are effective on June 21st, 1937. Price lists are to be mailed on Saturday, June 19, 1937.

". . ."

(Exhibit 849E)

The minutes contain lists of prices of heels and half soles to dealers and distributors.

A similar entry appears in the minutes of a meeting held on June 6, 1938 at which prices of heels to dealers and distributors were agreed upon (Exhibit 838).

It should be noted that during this period references are made to three types of wholesalers, viz. jobbers, distributors and dealers, but in fact the first two terms appear to have been used interchangeably, both receiving the same discount of 10 per cent and 2 per cent, and the third term refers to what was later known as accommodation jobber, receiving a discount of 2 per cent (Exhibits 848, 849).

The minutes of a meeting held on June 2, 1939 contain another list of prices of heels for dealers and distributors. The agreement is quoted in full to show the nature of these agreements:

". . .

The following was agreed to:

RUBBER HEELS - Dealers' and Shoe Findings Distributors' Prices
Effective June 2nd, 1939

Item	Type	Thickness	Size	Per Dz.	Pairs
				East Black & Tan	West Black & Tan
1	Scoop or Curved Men's	1/2	All	\$1.16	\$1.26
2	Flat - Half - Men's	1/2	All	1.16	1.26
3	Flat - Men's Orthopedic	1/2	All	1.46	1.56
4	Scoop or Curved - Women's Cuban	3/8	All	.86	.90
5	Scoop or Curved - " Kidney	3/8	All	.86	.90
6	Scoop or Curved - Top Lifts	2/8	All	.68	.72
7	Flat - Junior Boys or Women's	3/8	9,10,11,12	.92	.96
8	Flat - Junior Boys or Women's	3/8	13 to 20	1.04	1.08
9	Junior Wedge	3/8	All	.92	.96
10	Whole - Boys' or Women's	7/8	3,4,5,6	1.38	1.48
11	Whole - Men's	7/8	7/8 to 12/13	1.56	1.68
12	Toplifts in Sheets	7/32	Dz. Fr. Heels	.50	.54
White Heels, any type or size .36¢ per doz. Pairs more than list.					
Distributor Discount 10% and 2% cash.					

The new prices will be communicated to company branches and field forces at once, and to the trade as soon as price-lists can be printed.

Past legislation applicable to distributor, jobber, dealer and repair-trade merchandising will be considered as in effect.

Sales to Provincial Governments are to be at jobber-distributor prices without sales-tax and to the Federal Government with sales-tax.

". . ."

(Exhibit 742)

With respect to sales to repairmen, in the early part of this period the minutes record agreements fixing prices to repairmen in certain territories while in other territories the prices were to be those established by the jobbers. This is illustrated by the following extracts from minutes of meetings. From the minutes of a meeting of June 9, 1936:

"Prices to Repairmen: In organized territories these prices are to be the same as those set up by the jobbers of such territories.

In unorganized territories prices are to be marked up 20% over lists, East and West."

(Exhibit 849A)

From the minutes of a meeting of June 30, 1937:

"Prices to Repairmen: In organized territories these prices are to be those set up by the jobbers of such territories. In unorganized territories minimum prices to unlisted accounts are to be as follows, East and West:

Item	Type	Size	Thick- ness	Per Dz. Pr. Blk. & Tan	
				East	West
1	Scoop or Curved Men's	All	1/2"	\$1.40	\$1.50
2	Flat - Half - Men's	All	1/2"	1.40	1.50
3	Flat - Men's Orthopedic	All	1/2"	1.70	1.80
4	Scoop or Curved--Women's Cuban	All	3/8"	1.10	1.15
5	Scoop or Curved-- " Kidney	All	3/8"	1.10	1.15
6	Scoop or Curved--Top Lifts	All	2/8"	1.00	1.05
7	Flat - Junior Boy's or Women's	9,10,11,12	3/8"	1.10	1.15
8	Junior Wedge	All	3/8"	1.10	1.15
9	Whole - Boy's or Women's	3,4,5,6	7/8"	1.45	1.55
10	Whole - Men's	7/8 to 12/13 incl.	7/8"	1.65	1.75
11	Toplifts in sheet form	All		.80	.85

White Heels are to be priced 40¢ per dozen pairs higher than Blk. & Tan.

In Unorganized Territory the charge for full soles, tap-soles and moulded soles and slabs will be 5% over the dealer prices for these articles."

(Exhibit 842)

In the course of the oral evidence, some witnesses were unable to explain the distinction between organized and unorganized territories. One witness described an organized territory as one "organized in the sense that the jobbers had some sort of an association that met occasionally and discussed their problems." From this and the above extracts it would appear that an unorganized territory was one in which prices to repairmen were not established by an organization of jobbers. As previously pointed out the greater proportion of sales to this class of customer was made through the jobbing trade and the purpose of the distinction apparently was to endeavour to ensure that in those areas where there were no uniform jobber selling prices the selling prices of the members of the Group would be uniform to the repairmen.

By the middle of 1939 it appears that the Companies had become dissatisfied with their method of classifying wholesale accounts. This is indicated by the following extract from the minutes of a meeting held on August 9, 1939:

"There was a considerable discussion relative to the 'Distributor' list of accounts and the 'Dealer' list of accounts, both as to names and the basic principles for qualifying.

A committee consisting of Messrs. Jeffries, Yates and Joslin were named to consider this subject and report. It was directed that in dealing with this subject and reviewing the lists, there should be regard paid both to volume and type of operations and to geographic location of accounts."

(Exhibit 864)

Apparently the committee succeeded in revising the discount structure applying to the shoe findings trade, for the minutes of a meeting held on November 2, 1939 contain the following entry:

"Discounts: Agreed that the class discounts for heels to No. 1 Jobber-Distributor 20% and 5%; No. 2 Local Jobbers 20%; No. 3 Accommodation Jobber 12½% shall apply also to sales of Slab or Sheet Soling, to Golosh Soling Slabs, to Full Soles, to Half or Tap Soles, to Sports Soles and Heels, to Camp Shoe Soles, to Crepe Soles and to Shoe Cement.

Further, that quantity discounts as follows shall apply on purchases of one delivery for each order for Class No. 4 Repairmen and Retailers;

Slab or Sheet Soling (backed or unbacked)

<u>Sheets</u>	<u>Discount</u>
10	5%
20	10%
30	15%

Golosh Soling Slabs same as above but ordinary Slab Soling and Golosh Soling orders and deliveries are not to be combined to make up quantities to get discounts.

The quantity discounts for one order and one delivery, no combining to get quantity discounts, to No. 4 Repairmen and Retailer Accounts, for Half or Tap-Soles, Full Soles, Crepe Soles, Camp Shoe Soles, Sports Soles and Heels are as follows:

1 gross	5%
3 gross	10%
5 gross	15%

(Exhibit 319)

Then followed an agreed list of prices for both eastern and western Canada on certain types of heels and soles.

The method of quoting a separate list price to repairmen and retailers was thus discontinued and this class was sold at the jobbers' list price less certain quantity discounts. The minutes of a later meeting (Exhibit 600) indicate that the agreement to revise the list organization and the discount structure was actually made at a meeting held on September 28, 1939. No copy of these minutes was received in evidence.

The distinction between the Class 1 and Class 2 jobbers was explained in evidence by F. T. Yates of Goodyear:

"Q. . . . Do you remember that? Who was a No. 2 local jobber?

- A. Yes, I do, I can explain that. That set-up stayed in effect for a very short time with the jobbers. It was felt that a local jobber -- there are two or three jobbers in Hamilton who do not go outside Hamilton. They would be local jobbers. Other jobbers would be men like Adams or Parsons, who have salesmen and spend money, and it was felt they were entitled to more than the local jobber."

(Evidence pp.3033-34)

Mr. Yates went on to say that the system did not work out very well because the No. 1 class of jobbers would undersell the No. 2 class, so the Companies eventually combined these two classes into one. Mr. Yates also explained that the Accommodation Jobbers were accounts, such as wholesale hardware firms which handled a fairly small amount of heels and soles for the convenience of their customers in other lines.

At this meeting on November 2, 1939 representatives of the Companies agreed upon prices for some types of heels and soles, and lists of prices were included in the minutes (Exhibit 319).

At a meeting held in Montreal on April 4, 1940 members of the Group agreed to add certain types of second-line half soles to the lines produced by them for shoe findings jobbers. The minutes of this meeting contain a list of prices set by the Companies to jobbers for these types of soles (Exhibit 531).

The decision to amalgamate the first two classes of jobbers, referred to by Mr. Yates was made at a meeting held in Toronto on May 9, 1940 when representatives of the Companies agreed upon a revised classification of the various accounts engaged in the shoe findings trade. The minutes of this meeting contain a fairly clear description of the various types of customers supplied and the agreement is quoted here in full:

". . .

Class of Accounts: Agreed that there are several types of heel, sole and slab distributors whose operations should be recognized in proportion to their value to the manufacturers and the degree that they relieve the manufacturer of distribution, selling and credit expenses. There should also be some recognition of the economy involved in volume purchases.

It was agreed that present class No. 1 and No. 2 lists of jobber accounts be combined, and that there be recognized three classes of distributors of heels, soles and slabs for replacement use, as follows:

No. 1-2 - Jobber Distributor and Local Jobber: Accounts with the following qualifications: (a) Carry a stock of leather and of general shoe-findings in a commercial warehouse; (b) Have salesman or salesmen regularly and actively soliciting business from only the retail and repair trades on leather and general shoe-findings lines; (c) Have sufficient working capital and a credit rating to warrant

being sold to with the confident expectation that the account will meet its bills; (d) Co-operate with the rubber manufacturers toward the sound sales distribution of articles handled and follow only such merchandising policies as are conducive to the maintenance of good order in the shoe-findings industry as a whole; (e) Stock and offer for resale rubber companies' products only as packed by rubber manufacturers for the retail or repair trade.

No. 3 - Accommodation Jobbers: Accounts such as wholesale hardware concerns that sell heels as a side line and chiefly for the convenience of their customers for other goods and for the convenience of their community.

No. 4 - Repairmen and Retailers: Accounts that buy heels for use in shoe repairing or for sale to persons for use in repairing.

Agreed that there be one list of prices for heels, for soles, for half soles and for slabs.

The following discounts from list prices shall apply:

To No. 1-2 - Jobber Distributor and Local Jobber, 20% and 5%;
To No. 3 - Accommodation Jobber, 12½%;
To No. 4 - Repairmen and Retailers, list less quantity discounts.

Quantity discounts on heels only for No. 4 class accounts only, shall be for one order and one delivery -

5 gross - 5%
10 gross - 10%
15 gross - 15%

No quantity discount applies on items other than heels.

The present No. 1 list of discounts of 20%, 5% and 2% cash will apply as from to-day to the combined No. 1-2 listed accounts, but there is to be no rebating to accounts transferred from class 2 to Class 1 discount status.

The new listing for No. 1-2 is as follows, and No. 3 'Accommodation Jobber' list is repeated for convenience of reference:

. . ."

(Exhibit 532)

Then followed a list of customers in each province classified as No.1-2 Jobber-Distributor and Local Jobber, and a list of customers in each province, except Alberta and British Columbia, classified as No. 3, Accommodation Jobbers.

This system of classification continued for approximately a year when the previous system of classifying Jobber-Distributors and Local Jobbers separately was reverted to (Exhibit 600).

The following agreement had previously been recorded in the minutes of a meeting of June 11, 1941:

" . . .

Jobber List: Agreed that no account will be added to a list or sold at jobber prices until after being cleared at a meeting.

. . ."

(Exhibit 601)

(b) Jobbers' Lists

Jobber classifications and discounts have already been described. The present sub-section deals with discussions and agreements relating to the actual firms which the Companies considered eligible for these classifications and discounts. In a trade such as this agreement upon jobbers' discounts does not achieve uniformity of pricing unless there is a complementary agreement upon the persons or the classes of persons who will be recognized as jobbers. The evidence indicates that throughout this period the Heel and Sole Group drew up common lists of jobbers in conformity with the accepted qualifications.

Early in the period the industry recognized two types of jobbers: Shoe Findings Distributors and Dealers. Later it was decided that there should be three types: Jobber-Distributors, Local Jobbers and Accommodation Jobbers. As has been seen, agreements were made on the discounts applicable to all these groups. At the same time the Companies agreed upon all the firms throughout Canada which would qualify for the various classifications, and the names of these firms were consolidated into master lists of jobbers by the secretary of the Association. The lists were then approved at meetings and distributed to the Companies. It was also agreed at meetings that any changes, by way of addition or deletion, should be cleared at meetings of the Group.

The minutes of the meeting held in Toronto on June 9, 1936 contain a list of shoe findings distributors and dealers throughout Canada. The list contains names of firms in all the provinces and sets out the discounts to which they were entitled (Exhibit 849).

As already noted the discount structure was altered at a meeting held on September 28, 1939 and although no copy of the minutes of this meeting was put in evidence, other documents (Exhibits 319, 864) indicate that the industry jobbers' list was also revised at that time to accord with the new discount structure. At a meeting held on August 9, 1939 the Group discussed the distributor and dealer lists "both as to names and the basic principles for qualifying", and a committee was named to consider the subject and report (Exhibit 864). The following extract from the minutes of the meeting held on November 2, 1939 contains the first known reference to a list involving three types of jobber accounts. This extract also serves as an example of the type of agreement made during this period:

"Named List Accounts: The following additions or changes were made to named lists:

No. 1 Jobber Distributor List

Warkov & Safeer	- Winnipeg, Manitoba
Fred Lytle	- Vancouver, B. C.

No. 2 Local Jobber List

S. & R. Mirsch - Fort William instead of Fort Arthur
C. D. Banks Agencies - Winnipeg, Manitoba

No. 3 Accommodation Jobber List

Wood Alexander & James - Hamilton, Ontario
W. J. McIntyre - Swift Current, Sask.

The qualification of J. D. Roy, Sherbrooke, F. F. Zelisko, Toronto, Sumner & Co., Moncton, N.B., and the address of C. Labelle & Cie (whether Sherbrooke or Sorel) will be reported upon."

(Exhibit 319)

At a meeting held on May 9, 1940 the discount structure was again revised, and again a complete list of Jobber-Distributor and Local Jobber accounts and also Accommodation Jobber accounts was incorporated in the minutes (Exhibit 532). In addition to these revisions, the minutes of meetings throughout the period contain records of additions which were made to the various jobber lists.

(c) Oral Evidence and Degree of Adherence

In the course of the hearings representatives of several of the Companies gave evidence with respect to the apparent agreements relating to sales to the shoe findings trade. The interpretations given were substantially similar to those regarding sales to shoe manufacturers. It was stated that agreements respecting prices had never been made but that reasons for a price change by an individual firm might be discussed after the change was made; or that while members of the Group had agreed upon prices the agreements were not lived up to; or that a company would agree "with its tongue in its cheek", that is, it was not expected that the agreements would be lived up to.

The minutes of meetings do, however, contain instances of attempts by the members to eliminate practices which appeared to be in violation of the recorded agreements. For example, the minutes of a meeting of June 1, 1938 contain the following:

" . . .

In opening Mr. Joslin (C. A. Joslin) said that during the past few months understandings had been disturbed by one company adopting new heel prices for shoe manufacturers and another offering a two weeks special to the jobbing and repair trades. Each of these actions being taken apart from a meeting. It had also been alleged that other companies had not adhered to understandings prior to the action of the two companies mentioned above. He had suggested this meeting, hoping that improved conditions might result from a conference.

Mr. Jeffries stated that the two weeks of Viceroy's special offer terminated to-day. No more orders would be taken under it and deliveries would be completed as soon as possible.

Mr. Esterson stated that he would wire his field force to-night to cease on Saturday next taking heel orders under the special terms he authorized after the Viceroy announcement and would complete deliveries of such orders by June 11th, 1938.

...

Stability: It was agreed that hereafter no company will announce new prices except after discussion at a meeting.

..."

(Exhibit 839)

The minutes of the meeting held on June 2, 1939 contain another reference which indicates that there had been some price cutting contrary to the established arrangements and steps were being taken to correct it:

"Applicable to Distributor-Jobber and Repair Trade Business:

To correct irregularities, it was agreed that special deals with jobbers will be immediately cancelled by each company having such and company salesmen will be controlled. Existing commitments to jobbers at other than new prices will be completed by deliveries within thirty days; at the end of which time unfilled balances will be cancelled."

(Exhibit 742)

The witnesses from the Companies stated that there were substantial deviations from the prices reported as agreed upon in the minutes. Doubtless there were deviations which may have frequently reached substantial proportions. The first question, however, is whether such agreements were made, and obviously they were. Beyond that, they were, apparently, sufficiently esteemed to warrant the officers of the Companies in continuing to meet and record them and to make efforts to obtain adherence to them.

Witnesses from some of the Companies which sold to jobbers were asked at the hearing about the nature and extent of the agreements on jobbers' lists. Their evidence was to the effect that a common industry list as kept and discussions took place in regard to additions and deletions, but the evidence differed as to the extent to which the Companies felt themselves restricted to such list. A typical explanation was given by C. M. Mather of Gutta Percha who stated that a common list of jobbers was made up by the then secretary of the Association, and that the names of applicants were discussed at meetings of the Group, but he said he could remember no instance of a name being withdrawn for lack of qualifications, and that his company would add a name without discussing the matter with anyone. He stated further that there was an attempt made by the industry to establish a common list but it was not effective.

D. Prices to Government Departments and Institutions

There are only a few agreements recorded in the minutes regarding prices on sales to Government departments. The first agreement

of which there is evidence is contained in the minutes of a meeting of June 14, 1937 as follows:

" . . .

Heels, Soles and Slabs to Governments: Agreed that the Federal Government is to be charged distributor prices with sales-tax and Provincial Governments and institutions be charged distributor prices without sales-tax.

. . ."

(Exhibit 843D)

Similar agreements, establishing the price to be charged as the Jobber-Distributor price with or without sales tax as the case might be are recorded in the minutes of a meeting of June 2, 1939 (Exhibit 742) and of July 9, 1941 (Exhibit 600).

E. Range

Rubber heels and soles are described by size and thickness and rubber soling by thickness and area. They are not products which are subject to radical changes in style. Any changes are as much dictated by the demands of shoe manufacturers as by the desire of the heel producers themselves to change the style. One would, therefore, expect to find that the shapes and sizes of the commonly used heels and soles would tend to become substantially standardized. It is apparent, however, that for agreements on uniform prices to be effective, it is necessary that the ranges of the different products manufactured by the various companies be comparable with regard to quality and use.

The different classes of customers supplied by the industry did not necessarily receive products of the same quality. The best quality was supplied, by some manufacturers at least, to the shoe findings trade and the next best to the shoe manufacturers. The heels and soles sold to the other class, the chain stores or the syndicate trade, were generally of a lower quality. Within the classes described, the products were generally similar with one exception. One company produced what it described as a "super heel", which was stated to be of higher quality than any other heels manufactured and was sold under a trade name to the shoe findings trade at prices higher than the standard list.

The documentary evidence indicates that steps were taken from time to time to maintain similarity of product. The evidence also indicates that the members of the Group were concerned with achieving some saving in investment in moulds and it was stated, in the course of the

hearings by representatives of the member companies that the purpose of the agreements was to effect savings in production costs. The following discussion is recorded in the minutes of a meeting of October 21, 1936:

" . . .

Moulded Soles: . . .

A canvass of the meeting disclosed the fact that several companies had only one pattern of a spring-heel-sole, one or more had two patterns and one had four patterns. The latter company stated that it charged a premium price for one of its patterns and that, while it was available to any shoe manufacturer, only one such manufacturer was taking it.

The opinion was expressed that a company with a number of sole patterns had a trading advantage over companies able to offer only one or more patterns; also that the volume of business did not justify the expense of all companies having multiplicity of moulds.

The company that now has the four moulds, agreed to see if it could cease production from one mould, and inform the Association without delay whether or not it could do so. In the meantime, other companies will consider whether or not they will go to the expense of buying additional moulds for competitive reasons.

In February next, the Association office is to ask companies to consider the limitation of the number of its sole patterns and come to the March meeting prepared to discuss this subject.

. . .

In the afternoon the spring-heel soles of General, Goodyear, Panther and Dominion were compared and found to conform to understandings as to sizes and iron thicknesses.

. . . "

(Exhibit 847)

The minutes of the meeting of June 29, 1936 had contained the following entry:

" . . .

Agreed that each company will send to the Association office a sample of each style, size and iron of its Spring Heel Soles for Camp Shoes, with a statement of the prices to shoe manufacturers according to colour, style, size and iron. The day before the next meeting Dominion, Panther, Goodyear and General Rubber Companies will meet and pass upon such samples."

(Exhibit 848)

That agreements on range were related to agreements on prices is illustrated in the following extracts from the minutes of meetings of January 13 and June 14, 1937, respectively:

"New Equipment: Before a manufacturer installs equipment involving a new design in the production of heels or soles, he is to advise other manufacturers of this at a meeting and inform them of his proposed prices for such goods."

(Exhibit 318C)

This followed a statement that one of the members had announced that it was contemplating a change in the design of its heels.

"Half Soles: It having been found that there were differences between companies in the size markings of half soles and that this sometimes affected pricing, samples of the various companies were compared to ascertain size differences and arrangements were made for identical size indications being applied by each company to all half soles of similar size and thicknesses.

Heavy Gravity Flat Soles: Gutta Percha stated that it would come into conformity with other companies by changing the thickness of its soles from 10 to 9 iron gauge."

(Exhibit 843A)

That the members in their agreements on range were equally concerned with the question of price uniformity as with the desire to reduce production costs is indicated by a discussion and an agreement regarding designs of spring-heel soles for shoe manufacturers recorded in the minutes of the meetings held in June 1937.

At the meeting held on June 14, 1937 (Exhibit 843A) the members of the Group discussed a proposal that each company should be allowed to produce exclusive designs of spring-heel soles to be reserved for the use of certain specified shoe manufacturers. It appeared that certain shoe manufacturers were endeavouring to obtain these soles in more unique designs. The members at the meeting showed some concern about the added costs which would result if they adopted a policy of producing exclusive designs, and it was decided to reserve the matter for further discussion at the meeting of June 30.

At the meeting held on June 30, 1937 the matter was again discussed and it was agreed that special designs could be manufactured for certain specified accounts provided certain conditions were followed. These conditions are contained in the following extract from the minutes of this meeting:

"Spring-heel Soles for Camp Shoes, it was agreed could be supplied in special designs to listed large leather footwear manufacturing accounts, the annual purchases of which amount to 100,000 or more pairs, and therefore are large enough to justify the considerable expense of the required mould equipment. Such special-design spring-heel soles, are not to bear the name or emblem of the shoe manufacturer,

and are to conform in gravity, thicknesses, sizes and all other construction specifications that are agreed upon by the sole manufacturer. Orders for such spring-heel soles of exclusive design shall be subject to the same prices, the same requirements as to time for delivery and the same provisions as to price changes as apply generally to shoe manufacturers' orders for spring-heel soles. The accounts to which spring-heel soles of special design may be supplied are Humberstone Shoe Co. Limited, Humberstone, Ontario; T. Sisman Shoe Co. Limited, Aurora, Ontario; Colonial Footwear Co. Limited, Toronto, or any other shoe manufacturer who contracts to take delivery of not less than 100,000 pairs of such special-design spring-heel soles within the period of twelve months following the date of the contract."

(Exhibit 842)

An agreement contained in the minutes of a meeting held on April 4, 1940 relates to the addition of second line half soles and the measures taken to ensure uniformity:

". . .

Second Line Half Soles: It was agreed that these should be added to the lines produced by companies for shoe-findings jobbers. They are to be supplied only in 10½ iron thickness; only in plain black color, with no colored medallion and no fabric or fibre filling or shank. They are to be packaged for the jobbing-repair trade in plain manilla board dozen-pair boxes, without printing but merely stamping on the boxes. No samples are to be sent out or announcement or information given to the trade or to company organizations until May 1st.

The following prices were set: . . . (Price lists to jobbers and to shoe manufacturers were then set out.)

To shoe manufacturers these are to be sold in bulk only. The color, construction and announcement limitations are the same as those applicable to jobbers.

". . ."

(Exhibit 531)

F. Other Agreements

In addition to the agreements referred to in the preceding sections relating to prices, discounts, classification of customers and range, the minutes record agreements with respect to such matters as rebates, acceptance of orders, minimum orders, freight charges, and disposal of obsoletes. The following extracts from the minutes illustrate the nature of these various agreements. From the minutes of a meeting of June 9, 1936:

"Rebating: As of June 9th, 1936, prices to the Shoe Findings Jobber Trade were reduced on heels, top-lift blocks or slabs, tap-soles and slab or sheet-soling and it was agreed that any company should be entitled to rebate the amount of the price reduction on all goods invoiced as of May 4th, 1936, and to present date on all articles reduced in price as of this date."

(Exhibit 849A)

From the minutes of a meeting of January 13, 1937:

"Time for deliveries to Manufacturers: It was agreed that definitely specified orders from leather shoe manufacturers for heels, soles or slabs may be accepted for delivery within 60-days. However, all orders are to be accepted on the understanding that, in the event of an increase in price, such definitely specified orders will be shipped within 30-days from date of such price increase. Failing acceptance by customer of any unfilled orders within 30-days from date of price increase such unshipped balances will be automatically cancelled.

...

Deliveries to Jobbers or Repair Trade: It was agreed that definitely specified orders may be accepted for the jobbing and repair trade for heels, soles or slabs for delivery within 30-days. However, such orders are to be accepted only on the understanding that, in the event of an increase in price, such definitely specified orders will be shipped within 15-days from date of such price increase. Failing acceptance by customer of any unfilled orders within 15-days from date of price increase such unshipped balance will be automatically cancelled."

(Exhibit 318A, C)

From the minutes of a meeting of June 14, 1937:

"Minimum Orders: It was agreed that it is an improvident and unprofitable practice to allow distributors the jobber 10% discount on small orders, such as those that are frequently made for the delivery of a few pairs of heels, soles or slabs. It was agreed that hereafter no order from a distributor will be accorded the 10% discount on any order for less than one gross of heels consisting of three dozen minimums of one size and color (excepting white). Small orders are to take dealer prices."

(Exhibit 843D)

From the minutes of a meeting of March 2, 1937:

"Freight Prepayment - Freight paid to shoe findings jobbers' warehouse on shipments of 100 lbs. or more. For drop shipments the following applies:-

1. Prepayment of freight on heel shipments of 3 gross and over to any point Port Arthur, Fort William and East, for listed jobbers located Port Arthur, Fort William and East.
2. Prepayment of freight on heel shipments of 3 gross and over to all points west of Port Arthur and Fort William, for listed jobbers located west of Port Arthur and Fort William."

(Exhibit 845)

Drop shipments occurred where the salesman of a manufacturer took an order from a repairman and at the option of the jobber serving that particular

district, the order might be shipped direct from factory to buyer with the jobber doing the billing.

From the minutes of a meeting of June 2, 1939:

"Obsoletes: Before disposing of job lots of heels, soles or soling, full particulars regarding quantities and reasons for obsolescence must be cleared at a meeting."

(Exhibit 742)

The purpose of these agreements appears to have been to **supplement** the other agreements relating to prices and jobbers' lists so as to prevent these latter agreements being defeated by the offering of competitive advantages in incidental matters.

Chapter 3 - The Wartime Control Period

A. Controls

The general nature and effect of wartime control regulations, including price controls, supply controls and equitable distribution, have been discussed in Chapter 3 of Part I, and it will be sufficient to mention here a number of matters that were of particular significance in respect of rubber heels and soles.

Between October and December 1941 the amount of rubber authorized for the processing of civilian goods was progressively reduced. During that period the industry was free to make its own plans for implementing the details of the rubber conservation measures. At a meeting held on October 31, 1941 (Exhibit 984), the heel and sole manufacturers agreed upon various such plans. Among matters discussed at this and subsequent meetings were rubber quotas, steps to be taken in reducing lines, sizes and thicknesses of products, the reduction of crude rubber content and the increased use of reclaim.

On December 13, 1941 the manufacture of heels and soles in common with other civilian rubber goods was suspended. Production was resumed early in 1942 and was continued until June of that year when it was again suspended. In January 1943 an order of the Rubber Controller permitted the manufacturers to resume production of heels on a limited scale for military and civilian use. This order permitted the use of reclaim and scrap rubber only and did not permit any crude or synthetic rubber to be used. It also provided that only black heels might be manufactured and that wells be put in all heels. In May 1943 another order provided for the use of reclaim and scrap only in the manufacture of soles and slab soling.

Restrictions on reclaim rubber were eased in December 1943 and in the months that followed GR-S synthetic which was suitable for use in heels and soles became available in quantity. Controls over rubber content and range were then progressively relaxed. By July 1945 it was permissible to manufacture the range that had been made during the basic period, but colours were restricted, wells in heels continued mandatory and the use of crude rubber was not yet permissible. In May 1946 all restrictions on the manufacture of heels and soles were cancelled. Limitations were at that time removed on the use of crude rubber because of the comparatively small quantities involved.

When the policy statement of September 1945 on equitable distribution described goods that were released entirely from the policy and goods that were partially released, the remaining goods still being subject to the policy, heels and soles remained in the last mentioned category. Shortly thereafter, however, the heel and sole manufacturers were discussing the eligibility of particular traders for recognition as jobbers from which it would appear that the restrictions involved in the policy

were being automatically relaxed by more ample supplies. Effective November 1945 20 per cent of all rubber goods was freed from the policy of equitable distribution and the policy appears to have ceased entirely to affect heels and soles in January 1947.

B. Agreements during Controls

The control period with its fixed price ceilings and its scarcities greatly reduced the incentive to enter into price agreements and it is therefore to be expected that the pre-control pattern should to some extent be broken. The following paragraphs, however, describe certain agreements made during the control period by the members of the Heel and Sole Group and indicate the continuance of a common industry policy.

The meetings specifically referred to in this chapter were attended, generally, by Miner, Panther, Goodyear and Holtite. Viceroy and Dominion ceased to manufacture heels and soles during this period but were regular attendants until sometime in 1945. Canadian General Rubber, which ceased to manufacture in 1944, attended one such meeting.

(a) Prices

The maximum prices established as of December 1, 1941 were those which existed during the period from September 15, 1941 to October 11, 1941, called the "basic period". The situation which existed in the heel and sole industry with regard to prices to shoe manufacturers has already been described in the chapter on the pre-control period. It will be remembered that in May of 1941 the Companies had agreed to advance prices to shoe manufacturers by 10 per cent, partly because secret price concessions that were being given to the shoe manufacturers were reducing net returns (Exhibit 603). In addition, the members of the Heel and Sole Group had agreed that these discounts might be continued to those manufacturers who had been receiving them (Exhibit 599), but the Companies continued to treat them as special discounts and they were not included on the printed price sheets to shoe manufacturers.

It is evident, therefore, that the list prices to shoe manufacturers, which were issued during the basic period, were in some cases actually 10 per cent above those which had, in fact, been charged. After price ceilings were imposed in 1941 the Companies continued, to some extent at least, to grant the special discounts which had been given during the basic period, until they ceased producing heels and soles in June of 1942 (Exhibit 747). After the resumption of production was authorized on January 8, 1943 the Companies held a meeting on January 15, 1943 where "it was agreed that no increase in prices (on heels) would be requested, but that previous prices as shown below will be continued without special discounts" (Exhibit 862). Apparently

the Wartime Prices and Trade Board agreed that these special discounts should be disregarded for the purpose of determining price ceilings (Exhibit 971). The result was that higher net prices were being charged on sales to some shoe manufacturers than existed during the basic period, for a product which was inferior in quality to that which had then been produced, because of the existing restrictions on the use of crude rubber and the better grades of reclaim. This situation existed for about a year until, about January 12, 1944, the Rubber Administrator, after considering the possible effect of the elimination of such discounts on shoe prices, decided and ordered that all sales of heels to shoe manufacturers be made subject to discounts allowed to each customer during the basic period (Exhibit 747A).

The heel and sole manufacturers, as has already been noted, disagreed strongly with the decision of the Rubber Administrator and made strenuous efforts to have the order withdrawn or modified, but without success. They submitted that their costs had increased to the extent that in some cases they exceeded selling prices. When it became apparent that they would have to reinstate special discounts, the Companies decided that they would comply with the order only to the extent that was made absolutely necessary by the terms thereof. At a meeting held on April 19, 1944 the Companies made the following agreement:

". . .

Discounts to Shoe Manufacturers: Mr. Simpson advised that in complying with the ruling of the Wartime Prices and Trade Board that basic period discounts must be granted to shoe manufacturers, the Miner Rubber Company was applying the discounts only to the classes of products which each customer actually bought subject to discount during the basic period. In other words, a shoe manufacturer to whom only heels were sold at a discount during the basic period is now being granted a discount on heels only--not on soles and sole slabs. It was agreed that this was a sound policy which all heel manufacturers would follow.

Mr. Ater pointed out that a customer to whom he is not required to grant a discount might also be buying heels from another manufacturer who is required to grant a discount and that his customer might press him to meet the prices of the competing supplier. He stated that he did not intend to do so even if it meant the loss of the customer. Those present approved this attitude and it was understood that all heel manufacturers will adhere strictly to the prices at which sales were made in the basic period (Sept. 15 to October 11, 1941) and not grant discounts where they are not required to do so by the Wartime Prices and Trade Board ruling.

". . ."

(Exhibit 973)

This agreement had the effect of ensuring that the highest prices permitted would be charged by the Companies on sales to shoe manufacturers during the control period.

(b) Tenders

During the war the Department of Munitions and Supply had occasion, from time to time, to purchase heels and soles for the shoe repair shops of the Armed Forces. Purchases were made by tender and the lowest

quotation was accepted. According to the oral evidence, all contracts were subject to audit and prices were supposed to be limited to a 5 per cent mark-up over the cost of production. It appears from the minutes of meetings that the heel and sole manufacturers made agreements to fix the prices to be quoted to the Department of Munitions and Supply and to ensure that uniform quotations were submitted.

At a meeting held on August 24, 1943 the Companies made the following agreement:

" . . .

Maximum Heel, Sole and Slab Prices for D. H. & S., it was agreed should be the same as the East and West prices to leather shoe manufacturers, plus sales tax and less 2% cash discount.

These are to be worked out by sizes and types by the Association office and sent to each company.

In tendering, a company is not to deviate from these maximum prices, until after clearing with other companies by notice through the Association office and allowing time for correction of tenders.

. . . "

(Exhibit 861A)

Incorporated in the minutes received from the Association files was a price list setting out prices to be charged to the Department of Munitions and Supply for various types and sizes of heels, soles and soling. The agreement quoted above was re-affirmed at a meeting held on November 22, 1943 (Exhibit 978).

Another agreement was made at a meeting held on November 2, 1944:

"Prices to D. H. & S: Mr. O'Neill mentioned the incident which had occurred in connection with the last tender to D. H. & S., and indicated he thought the company which had been asked by D. H. & S. to lower its profit margin should have notified all other interested companies before doing so.

On the broader question of agreed prices to D. H. & S. generally, it was pointed out that there was a certain difficulty inasmuch as Government expects quotations at cost plus not more than 5%, and the costs of the various companies differ. It was agreed, however, to continue to maintain minimum prices to D. H. & S., and that in the case of products made of the compound specified in the last D. H. & S. tender, these minimum prices should be the prices shown in the minutes of August 24, 1943, plus 15%. Before deviating from these prices for any reason, a company shall consult with other companies through the Secretary of the Rubber Association.

In the case of galosh soling, there shall be no agreed prices, and companies may bid as they see fit.

. . . "

(Exhibit 860)

The Companies had agreed at a meeting held on September 12, 1944 to clear all tenders with the Association before actually submitting them to the Department (Exhibit 954), and an entry in the minutes of a meeting held on December 7, 1945 indicates that this policy was followed during the control period:

"TENDERS TO DEPT. OF M. & S: It was agreed that all companies should continue to clear with the secretary, the prices they propose quoting on Dept. of M. & S. tenders, before actually submitting their quotations to the Department, in accordance with the arrangement set forth in the minutes of September 12, 1944."

(Exhibit 858)

There is only one indication in the minutes that the agreement to submit uniform tenders was not adhered to, and the concern with which this departure was treated by the Companies indicates their efforts to maintain agreed prices to the Federal department concerned. In the autumn of 1944 the Department of Munitions and Supply asked for tenders for a quantity of heels and soles, specifying that a certain proportion of GR-S synthetic rubber should be contained in the compound. It appears that the Companies tendering agreed that because of the proportion of GR-S they would quote prices 15 per cent above those agreed upon for D.M. & S. tenders at the meeting of August 24, 1943. Evidently, after the tenders were submitted, one of the Companies was asked by the Department if it would reduce its quotation and the company agreed to do so. The order was then awarded to this company, and when the others found out they were very concerned. At the meeting held on September 12, 1944 the matter was discussed:

" . . .

Prices to Department of M & S: Reference was made to a recent D.M. & S. tender for heels and tap soles which specified a substantial proportion of GR-S in the compound. It was recalled that at the time the Secretary had been in touch with the three companies which were thought to be all that were interested in quoting. Of these, one had stated that it had already submitted its tender, and in view of the increased cost of putting GR-S in the compounds had quoted at 15% above the agreed prices to D.M. & S. as shown in the minutes of August 24, 1943. The other two companies had agreed to quote prices not less than 15% above the prices of August 24, 1943.

It was now learned that the tender for men's half soles, sizes, 7,9, and 11, in 12 iron had been placed at a price of about 17.70 cts, whereas the August 24, 1943, price is 20.11 cts., which, increased by 15%, equals about 23.13 cts. None of the companies present at the meeting had put in the low quotation. It was decided, therefore, that the individual companies should make discreet enquiries to ascertain who had done so and report their findings to the Association. It was also agreed that on future tenders to D.M. & S. all companies should clear with the Association before submitting quotations.

. . ."

(Exhibit 954)

This meeting was attended by representatives of Dominion, Goodyear, Miner, Viceroy and Panther. The other company then in the Group, Holtite, was not represented and a letter was sent by the secretary to the Holtite company advising that they should attend meetings in the future (Exhibit

875). The company which had sent in the low tender was, in fact, Panther, which was represented at the meeting by two officials of the company.

In a letter to the secretary of the Association dated September 15, 1944 G. Ater, General Manager of Holtite, referred to the fact that his company had not obtained the order although they tendered at the agreed price:

" . . .

We wish to advise that on the last bid on Half Soles to DM&S, we did quote over 15% higher than the lower quality product price set up and were not successful in getting any part of this order. The writer feels that this order went to someone out of the Association, which has happened in the past.

. . ."

(Exhibit 873F)

In a circular letter to all the Companies, including Panther, dated September 21, Mr. Smith referred to the letter he had received from Mr. Ater and stated: "In the circumstances member companies should continue their inquiries as to the successful tenderer and report their findings, if any, to the Association" (Exhibit 873A). Apparently Mr. Smith was not aware that Panther had obtained the order. Mr. Smith was informed of this by T. Y. O'Neill of Miner in a letter to him dated September 25, 1944:

" . . .

The second paragraph of your letter and Mr. Ater's letter both intimate that he did not know that the Panther Rubber Company had received the Department's order for both heels and Tap Soles. Incidentally, the information given in your letter of the 14th covering prices to Department of Munitions & Supply was confirmed by us, both as to the concern who received the order and the prices mentioned. Undoubtedly Mr. Joslin was at fault in not at once advising those companies with whom the arrangement of a 15% advance over the prices agreed upon had been made, when he quoted lower prices, in fact in our opinion the proper method would have been for Mr. Joslin to have consulted the other companies before agreeing to reduce his prices. It is only by the frankest co-operation that we can hope to continue working together with any degree of satisfaction and profit. I think that the other manufacturers who agreed upon the 15% advance in prices, have every reason to be extremely dissatisfied with the way this matter was handled.

. . ."

(Exhibit 872)

In his reply dated September 27, 1944 Mr. Smith stated in part:

"I am heartily in agreement with you that the Panther Rubber Company were a little less than frank with us on this whole matter and that

many more similar incidents would make co-operation in the heel group practically impossible. I think therefore, that this matter should be discussed fully at the next heel meeting on November 7th."

(Exhibit 871)

The next meeting was, in fact, held on November 2, 1944 and, as indicated on page 552, at that meeting the incident was brought up and discussed and an agreement was made to the effect that the Companies would continue to maintain minimum prices to the Department of Munitions and Supply despite the difficulty arising from the fact that the Government expected quotations to be cost plus not more than 5 per cent and the costs of the Companies differed. The expression "minimum prices" (Exhibit 860) means, of course, that no company would quote less than the agreed price, although any company might quote more.

In explanation of the agreements made at the meetings held on August 24, 1943 and November 2, 1944 T. Y. O'Neill, then of Miner, stated at the hearing:

"A. . . . And I think that the attitude of the different companies quoting was that it did not matter much what we quoted, because 5 per cent over cost would be given the companies and nothing more.

. . .

Q. Then, why would there be an arrangement or understanding between companies as to prices to D.M.S. if the prices were set by D.M.S.?

A. Well, we had to have some basis to quote to them.

. . .

Q. Why did you feel it had to be on a joint basis?

A. I can't say now just why, but in discussing it we thought that that was the best thing to do."

(Evidence pp.1169-70)

F. T. Yates, then of Goodyear, stated at the hearing that the Companies agreed on the prices to be quoted to the Department of Munitions and Supply and that it was the practice during that period to clear quotations with other companies by notice to the Association office. C.E. Joslin of Panther stated that there were discussions at meetings about prices to the Department of Munitions and Supply but that there was no real agreement. He stated that any time they did get a contract from the Department they did not consult their competitors at all. He said, however, that they did sometimes clear their proposed quotations with the secretary of the Association. A. A. Esterson of Holtite stated at the hearing that prices to the Department of Munitions and Supply were discussed to see if the Companies could arrive at prices which would be fair to the Government and to them. He denied that he ever filed any tenders with the Association office.

G. B. Smith, Secretary of the Association, admitted that an agreement existed to clear tenders with the Association before submitting them and suggested as a possible motive that the Companies had adopted this course in the interests of the Government in order to ensure, by quoting uniform prices, the spreading of the contracts so that all companies would be familiar with Government work in the event of a Government demand of such dimensions that all companies would be required to participate.

The weight of evidence indicates that during the control period the manufacturers agreed upon the prices to be quoted to the Department of Munitions and Supply and to abide by these prices.

(c) Jobbers and Discounts

The minutes of a meeting held on January 15, 1943 set out the various discounts in the shoe findings trade. This provision is appended to a list of heel prices contained in the minutes. The provision is as follows:

". . .

Trade discount to listed jobbers	20%, 5%
" " " " accommodation jobbers	12½% -
Cash discount 2% 10th prox.	
No special discounts.	

Quantity discounts from jobber list to retailers and repair men only, shall be for one order and one delivery--5 gross 5%, 10 gross 10%, 15 gross 15%."

(Exhibit 862)

The evidence indicates that these jobbers' discounts were followed by the Companies and were still being followed up to the time of this investigation (Evidence pp.2361, 3139).

The wartime policy of equitable distribution was applicable only where manufacturers could not supply the full requirements of their customers. When there were no shortages, the manufacturers were free to supply whomever they wished. It is evident that the supply situation permitted consideration of new accounts in 1945. Shortly before the end of the war, and for some time thereafter, the Companies began to receive a considerable number of requests from concerns anxious to be treated as jobbers. The evidence indicates that the Companies continued the practice which had existed before the war of agreeing upon and maintaining a uniform list of jobber accounts as well as the practice of clearing jobber applications through the Association. The first reference made at a meeting appears in the minutes of the meeting of April 3, 1945 at which the members discussed and disposed of an application made to Holtite by a Toronto co-operative. The entry is as follows:

"STERLING SHOE FINDINGS CO-OPERATIVE LTD: Mr. Ater tabled a letter dated March 19th from Mr. W. Wharrod, president of the above

organization, advising that a number of shoe repairers had bought shares in it and wished to purchase their rubber heels and other shoe findings through it. Mr. Ater stated that he had not replied to the letter. Personally he was not in favour of selling to this co-operative at jobbers' prices for fear of offending the regular jobbers in the trade, but he thought it would be necessary for the industry to come to some agreement which all would follow on this point.

After some discussion, it was unanimously agreed that the Sterling Shoe Findings Co-Operative Ltd. are not to be regarded as jobbers, and that sales to them shall be made at regular list prices applicable to repairmen and retailers, less the usual quantity discounts on heels only, for one order and one delivery as follows:

5 gross - 5%; 10 gross - 10%; 15 gross - 15%.

.. ."

(Exhibit 683)

About a year later the Co-Operative again applied and was again refused. The following entry appears in the minutes of a meeting held on February 26, 1946:

".. .

The consensus of opinion was that co-operatives of this type do not qualify for inclusion in the Jobbers' List as sales to them are equivalent to sales direct to the retail repair trade. It was agreed therefore, to confirm the previous rejection of an application from this firm."

(Exhibit 964)

At this meeting it was also agreed that an account in Fredericton, New Brunswick, would be added to the list of "Jobber Distributors and Local Jobbers."

Correspondence, also, indicates that at this time the Companies considered the matter of the Jobbers' List one for joint action by the Group. In a letter to the Association dated September 20, 1945 Mr. Yates of Goodyear wrote:

"At our heel meeting which is scheduled to be on October 3rd in Montreal, I feel that we should thoroughly discuss the question of adding new jobbers to the present list.

We have had several requests from new outfits that claim that they are buying heels from one or other of the rubber companies. I feel sure that we should have this cleared and decide to whom we should or should not sell.

.. .

... we seem to be having so many requests at the present time - some of them are due to the men returning from the war and wanting to get into a business for themselves - and I feel we should give some consideration to these applications at the meeting next month."

(Exhibit 868)

On October 12, 1945 C. E. Joslin of Panther wrote to G. B. Smith of the Association:

"...

I would also like it to go on record with the Association that during my absence from the office I found that an order had been shipped to Mr. Stan Blowers without my okay. However, I have stopped all further orders being shipped to this party until the Association has decided whether or not he qualifies as a jobber. I am passing this information on to you in case you receive any complaints registered through the Association."

(Exhibit 669)

The minutes of practically all of the meetings held between this time and the end of controls contain entries dealing with applications by firms desiring to be included on the Jobbers' List. Some of these applications were approved and some were rejected.

A revision of the industry Jobbers' List was begun on October 26, 1945 when the secretary of the Association compiled an up-to-date list of jobbers and circulated it to the members of the Group asking them to note any changes to be made in order that they might be discussed at the next meeting (Exhibit 867). The next meeting was held on December 7, 1945 and the list was reviewed by the Companies:

"...

The Jobbers' List submitted to all companies by the secretary on October 26th was reviewed carefully and a number of corrections were made as well as deletions of accounts that had gone out of business or had otherwise become inactive in the jobbing of heels and soles. The present status of a number of other accounts was doubtful and it was agreed that these be investigated, as indicated below. On the completion of these investigations, a complete revised Jobbers' List will be compiled by the secretary and distributed to all companies.

..."

(Exhibit 858)

Included in the minutes was a list of Jobber-Distributor and Local Jobber accounts and Accommodation Jobber accounts together with the names of the Companies which were to investigate these accounts.

At a meeting held on February 6, 1946 the Companies reported the results of their investigations referred to in the December 7 meeting

and it was agreed at this meeting that a number of names should be deleted from the list and that others should be further investigated (Exhibit 857). The revision was thus not completed at this meeting and, in fact, efforts were being made by the secretary to finish it all during 1946. On October 30, 1946 G. B. Smith in reply to a letter from an official of Goodrich stated that there was an agreed list of heel and sole jobber accounts, but that it was in a bit of a mess and was still in the process of being revised (Exhibit 827). By the time controls ended in April of 1947 the final revision had still not been made and the matter was left for consideration at future meetings. This subject is dealt with further in Chapter 4 of this Part relating to the post-control period.

Particular significance is not attached to the above mentioned deletions, many of which may have involved only the removal of non-active accounts. The significance lies rather in the reviving interest shown in uniform jobbers' lists as the industry emerged from controls.

(d) Post-War Planning

As early as 1943 the Companies in the heel and sole industry began to give consideration to steps which might be taken to ensure cooperation after the end of the war. There is a reference to what was known in the industry as "Post-War Planning" in the minutes of a meeting held on November 22, 1943 (Exhibit 978). Another reference appears in the minutes of a meeting held on June 13, 1944 at which it was agreed that the secretary of the Association should prepare a summary of heel and sole industry agreements (Exhibit 970). In accordance with these instructions G. B. Smith, Secretary of the Association, began to prepare a list of agreements from minutes contained in the files of the Association. He also obtained from T. Y. O'Neill, then Sales Manager of Miner, a list of agreements which the latter had compiled from the files of that company (Exhibit 323).

In the meantime it appears that the whole rubber industry was busying itself about plans for after the war. On October 11, 1944 T. Y. O'Neill of Miner received a letter from C. N. Larsen, General Sales Manager of Gutta Percha, in which he stated that the rubber industry had started to organize itself in anticipation of the end of the war, that various executives had been named to look after the post-war planning for the various divisions of the industry, that he (Mr. Larsen) had been made responsible for the mechanical goods section, of which the heel and sole industry had been made a part, and that he thought that Mr. O'Neill would be the proper man to head the heel and sole section. Mr. Larsen then outlined the various matters which he thought required discussion and decision, and ended by asking Mr. O'Neill if he would be willing to be responsible for the heel and sole section (Exhibit 76). Mr. O'Neill wrote the following reply in a letter dated October 13, 1944:

"In answer to your letter of the 11th instant, I may say that the matter of post-war planning and appointing a member to represent the group was brought up and discussed at one of our Heel meetings a few months ago. At that time it was decided not to do anything in the matter but to await further developments. The feeling was that the Heel and Sole group were pretty well organized and that not much

more could be done, so I do not feel like accepting the job, which has been suggested, of heading the group.

We are having a meeting of the Heel and Sole manufacturers in Toronto on Nov. 7th, a little over three weeks from now, and I think that under the circumstances, it will be advisable for us to let this matter rest until then. . . ."

(Exhibit 75)

On October 26, 1944 Mr. Smith of the Association wrote to Mr. O'Neill of Miner reporting on his progress in compiling the list of heel and sole agreements. Mr. Smith wrote, in part:

"I have been working on this . . . and have found it a rather tricky job to do because many agreements are obviously of temporary duration only, while others may or may not be purely for the duration of the war. Similarly a lot of the pre-war agreements may or may not be completely obsolete.

I have completed a regime (sic) from the present time down to the beginning of 1936, and enclose a copy for your examination. I did not go farther for several reasons. In the first place your own list seems fairly complete up to the end of 1935, but becomes very sketchy after that date. In the second place, I felt unsure about going back too many years without being certain that I was working along the right lines. Thirdly, it occurred to me that the post-war studies which you have been asked to initiate might well take the form of drawing up a new and up-to-date list of agreements for consideration and possible adoption by the industry, and that this would make many of the agreements reached in past years, obsolete."

(Exhibit 870A)

The agreements included in Mr. Smith's compilation are dated between 1936 and 1944. The agreements contained in Mr. O'Neill's compilation are dated between 1931 and 1944. However, only two agreements, one dated October 31, 1941 and the other dated February 17, 1944, are common to both lists.

At a meeting held on November 2, 1944 the Companies discussed post-war planning and considered the proposals of Mr. Larsen:

". . .

Post-War Planning: Mr. O'Neill advised that he had been requested by Mr. C. N. Larsen, Chairman of the Association's Mechanical Goods Post-War Planning Committee to initiate some post-war studies in the heel and sole industry. He had replied to Mr. Larsen suggesting that the heel and sole group should be given the opportunity themselves to appoint the Chairman of any post-war committee they might wish to set up, and that the matter be placed on the agenda for this meeting.

He then asked if the industry thought a post-war committee was required. For himself, he felt that the heel and sole group had already dealt with one of the most important problems to be faced by other sections of the rubber industry, that is to say, the question of the resumption of production of discontinued pre-war lines.

Another member stated that in a sense the heel and sole industry's post-war planning would largely be done for them by the leather shoe manufacturers whose demands will decide what heel and sole manufacturers will have to supply.

After some further discussion, Mr. O'Neill mentioned that the Secretary had recently completed a résumé of heel and sole agreements taken from minutes back to the beginning of 1936. He suggested that a good start on post-war planning might be simply to analyze this résumé, and confirm, revise or cancel the agreements recorded therein. This suggestion met with approval, and it was agreed that a copy of the résumé should be sent to all members of the group for study in preparation for discussion a number of items at a time at future heel and sole meetings.

. . ."

(Exhibit 860)

This and the other references to post-war planning indicate that, in addition to an appraisal of likely consumer demand and the capacity of the industry to meet it, there was contemplated the maintenance in the post-control era of arrangements directed toward the preventing or lessening of competition among the Companies.

Mr. O'Neill then wrote, on November 4, 1944 to Mr. Larsen describing the decision which had been reached at the above meeting:

" . . .

As you know, there are not many companies in the heel and sole group, and it was decided at our meeting that various post-war problems would be considered by the group itself at our regular meetings.

Sometime ago a list of resolutions that had been made at group meetings over a period of years was drawn up with the idea in mind that from these would be selected those items on which we would agree should be carried into the post-war period. The group will review these and will also consider any post-war problems that come up, so while a special committee has not been appointed for this work, consideration of post-war problems will be made with a view to avoid drifting into the period after the war without a plan of procedure to follow.

. . ."

(Exhibit 74)

On November 8, 1944 Mr. Smith sent to the Companies copies of his compilation of the agreements (Exhibit 320). Evidently these agreements

were reviewed by the members of the Group, for it was decided at a meeting held on April 3, 1945 that the present agreements should remain in effect until revised at a future meeting:

" . . .

POST WAR PLANNING: It was agreed to defer any attempts at post-war planning until restrictions on the manufacture of heels, soles and slabs have been lifted. It was also agreed that the present Heel and Sole Industry Agreements shall remain in effect after the removal of restrictions until revised by mutual agreement.

. . . "

(Exhibit 683)

Mr. Smith's compilation contained a list of agreements ranging in date from June 9, 1936 to September 12, 1944 and dealing with numerous aspects of the manufacture and distribution of heels and soles. The following are some of the matters dealt with in this list of agreements with the applicable dates:

" . . .

Prices to D.M. & S.: Agreed that on tenders to D.M. & S. all companies should clear with the Association before submitting quotations.
Sept. 12/1944.

. . .

Heel and Sole Compounds: With reference to the recent removal of restrictions on the use of GR-S and reclaim, agreed that owing to the extra cost involved, GR-S will not be used in heels, soles or slab soling, but that companies will remain free to up-grade with better grades of reclaim as they see fit. June 13/1944.

. . .

Off-List Discounts: Agreed that off-list discounts may be continued at existing rates to shoe manufacturers to whom they are now being given, but in no case shall a rate be increased, and each company will endeavour to establish 10% as the maximum rate for any such discount. July 31/1941.

. . .

Delivery: Definitely specified orders from shoe-findings jobbers may be accepted for delivery within 30 days. In the event of a price increase, complete shipment of such orders must be made within 15 days from the date of such increase. Failing acceptance by the customer within this period any unshipped balance will be automatically cancelled. (This is a minute of June 14, 1937, repeated).
July 9/1941.

. . .

Sales to Governments: Sales to Provincial Governments are to be at jobber-distributor prices less sales tax, and to the Federal Government with sales tax. July 9/41.

Jobber List: Agreed that no account will be added to a list or sold at jobber prices until after being cleared at a meeting. June 11/1941.

. . .

Exchanging Price Lists: Each company will send each other company and the Association office copies of its new price-lists. May 7/1941.

. . .

Rebates: Agreed that jobber price lists issued by each company should carry these words 'Goods sold at these prices are not subject to any rebate for future price decline'. June 1/1938.

. . .

Freight Prepayment: Freight paid to shoe findings jobbers warehouses on shipments of 100 lbs. or more of heels, soles, taps or slabs. For drop shipments the following applies:

- (1) Prepayment of freight on heel shipments of three gross or over to any point, Port Arthur, Fort William and East, for listed jobbers located Port Arthur, Fort William and East.
- (2) Prepayment of freight on heel shipments of three gross and over to all points West of Port Arthur, and Fort William, for listed jobbers located west of Port Arthur and Fort William.

. . .

June 14/1937.

. . .

Slabs: Agreed that for jobbers and distributors the prices for backed and unbacked slabs should be the same. June 29/1936.

. . ."

(Exhibit 320)

The compilation contained a large number of other agreements, some of current application and many whose effect had been spent. A considerable number of such agreements have been referred to at length on previous pages. This compilation is perhaps less significant in itself than in the intention to collaborate which it indicates.

Chapter 4 - The Post-Control Period

A. General

By the end of controls only four companies were still engaged to a substantial extent in the manufacture and sale of heels and soles. These were Goodyear, Panther, Holtite and Miner (Griffith's sales in 1947 and 1948 averaged less than \$2,000). Of these four, only the first three companies dealt with the shoe findings trade. All four companies sold to shoe manufacturers. The five other companies which had been in the industry at one time or another during the period 1936-1948 ceased manufacturing for various reasons, chiefly, according to the witnesses, because heels and soles were a non-profit line. Dominion withdrew because it was felt that its equipment could be more profitably employed in making other products. Gutta Percha had allowed its moulds to become obsolete and had never gone to any extent into the shoe manufacturers' field and felt that it would not be worth while to make additional capital expenditures to come into line with the other companies. A Canadian General-Tower witness stated that they ceased production because they were losing money, and a Viceroy witness gave evidence to the same effect. No evidence was offered indicating why Trafalgar ceased production. This Chapter deals with the activities of four of the remaining five companies after the lifting of Government controls.

The various measures imposing price and rubber controls were not cancelled simultaneously. Although price controls were not lifted until April 2, 1947 some of the restrictions on quality were removed in 1944 and on range in 1945. Limitations upon appointment of jobbers appear to have been automatically relaxed by easier supply sometime in 1945, while towards the end of that year 20 per cent of production was exempted from the policy of equitable distribution, and in January 1947, the policy ceased to apply to heels and soles.

After the abolition of controls the picture is not one of an industry seeking to reassert a competitive attitude but that of an industry planning to extend into the period when wartime restrictions had disappeared, the same kind of arrangements that had characterized it in the pre-control period. Here, as in the case of other parts of this Report, the conclusions are not based upon a critical scrutiny in retrospect of measures of cooperation which had relation only to the period affected by war-engendered restrictions, but rather upon the evidence of intent manifested in the post-control period that agreements would be the normal pattern of the industry.

With the suspension of price controls in April of 1947 the Companies were free to distribute their products to whomever they saw fit, and to fix their individual prices subject to the warning of the Wartime Prices and Trade Board that price restraint should be exercised under pain of possible reimposition of controls. Minutes of meetings and correspondence show that in fact the activities of the Group were carried on in the same way in which they had been carried on before controls were imposed. There is evidence that agreements were made relating to prices, jobbers and to some extent upon range of articles to be manufactured. The nature of these

agreements will be discussed below.

B. Prices

(a) Prices to Shoe Manufacturers

The following correspondence indicates generally that prices were discussed at meetings of the heel and sole manufacturers held subsequent to decontrol. On April 11, 1947 F. T. Yates, then of Goodyear, wrote to C.E. Joslin of Panther in part as follows:

"I did not have much chance to visit with you at the last meeting but I think it was quite an agreeable meeting and the majority of us were quite pleased to at least get a small increase on our manufacturers' heels and soles. I was telling Mr. Glass that we should get the Viceroy and Dominion back with us, the Holtite and Panther people are so well represented that we will be in the minority; however, if we can all get along as agreeably as we did Wednesday, that will not make much difference."

(Exhibit 662)

A meeting had been held two days previously in Montreal attended by four representatives of Panther, two representatives of Goodyear, one representative of Holtite and one representative of Miner.

On February 2, 1948 D. Shayte, an assistant to A. A. Esterson of Holtite, wrote to I. R. Ross, one of Holtite's salesmen, as follows:

"Re yours of the 29th on Misses full soles, I have checked Panther's price list, and you are evidently referring to their Misses Sport Soles. In the Misses Sport Soles they show a 10½ iron sole at .16½-Black and .18½-Tan and a 9 iron sole at the same prices. They also show a Child's Sport Sole, sizes 9 to 11, in the 10½ and 9 iron thicknesses, and these have the same prices as the Misses Sport Soles. I cannot give you any reason for this, but I have made a note of these prices, and the matter will be taken up with Panco at our next meeting with them."

(Exhibit 690)

Apparently this is in answer to a letter questioning the Panther prices.

In August 1947 the Companies held a meeting to consider a price increase and decided instead to cancel the special discounts which they had been required to allow to shoe manufacturers by the Wartime Prices and Trade Board, and had continued since decontrol. This agreement is referred to in a report, dated February 16, 1948 from G. R. Glass, of Goodyear to R.C. Berkinshaw, General Manager of the company:

". . .

Agreement to Withdraw Special Discounts as of September 1st, 1947

In August 1947, all manufacturers of rubber heels held a meeting with reference to a general price increase. It was agreed, how-

ever, this did not seem advisable in view of special discounts in effect. All present agreed to withdraw special discounts as of September 1st, 1947 rather than have an overall price increase.

..."

(Exhibit 747B)

Mr. Glass stated at the hearings that he did not remember the exact date of the meeting. G. B. Smith, the Secretary of the Association, stated that four heel and sole meetings were held from April 1, 1947 to September 10, 1947. Minutes were obtained for meetings held on April 9, July 9, August 6 and September 10. These meetings were attended by Goodyear, Miner, Panther and Holtite. The minutes relate principally to discussions about the use and advertisement of crude rubber and to changes in the Jobbers' List and they contain no references to this agreement. Mr. Smith stated that to the best of his recollection no alterations had been made by him in heel and sole minutes. It would appear likely, however, that the agreement was reached at the meeting on August 6 despite the omission from the minutes of any reference thereto. In view of the expurgation of minutes described in Chapter 4 of Part I, the absence of any such reference carries no implication that the matter was not dealt with.

There is evidence that action was taken to implement this agreement. Mr. Glass indicated at the hearing that, with some few exceptions, Goodyear withdrew special discounts. In a letter written to Mr. Glass on October 10, 1947 the Secretary-Treasurer of Underhills' Limited, a firm of shoe manufacturers, advised him that Miner and Panther had dropped their special discounts but that Goodyear invoices were still being made with discount (Exhibit 756B). Mr. Glass replied on October 15:

"Many thanks for your letter dated Oct. 10/47. This was an oversight on our Billing Dept. [word illegible] invoices will be list prices.

..."

(Exhibit 756A)

A letter dated November 13, 1947 from a member of the Accounting Department of Panther to a shoe manufacturer also indicates that this company complied with the agreement:

"We thank you for your cheque in settlement of your September account. We note, however, that you have deducted \$12.74, being ten percent of the amount due.

We beg to advise that, as at September 1st 1947, we have been forced to discontinue granting this 10% special discount. . . ."

(Exhibit 658)

The evidence, however, also indicates that not only did the Companies not trust one another to abide by the agreement but that their distrust was to some extent justified. Goodyear apparently decided to adopt a "wait and see" policy right from the start. In his memorandum to R. C. Berkinshaw, Mr. Glass stated:

". . .

. . . We did not start to follow this plan of discount withdrawal until approximately September 15th, as we were anxious to determine whether or not the opposition were sincere in living up to this agreement. . . .

. . ."

(Exhibit 747B)

This may explain the delay in cancelling the discount to Underhills' Limited.

A letter, dated February 17, 1948, from the Secretary-Treasurer of Underhills' Limited to Mr. Yates, then retired from Goodyear, shows that Panther's policy was the object of some doubt:

"Mr. Joslin of Panther was here yesterday and we went to the mat over past history of prices and price breaking.

He was most positive that they were playing the game and not giving discounts, matter of some special price to a customer was not so definite, but he could not recollect any at the present time.

I was most pointed to say that they and Holtite did not establish themselves in Canada on the basis of quality product buy by riding two horses while respectable gentlemen held the umbrella for them while they carried on their pricing cutting program.

You may call the Goodyear office if you choose.

. . ."

(Exhibit 755A)

It would appear that, partly because of this mutual distrust, the agreement was not a complete success, although it was followed to a very considerable extent. Both C. E. Joslin and G. R. Glass stated at the hearing that special discounts were again being given, but they also indicated that these discounts did not apply to a large percentage of their customers, and that they were only being given where necessary to meet deviations on the part of competitors.

In his memorandum above referred to of February 16, 1948 to the general manager of Goodyear, Mr. Glass described in some detail the action which they took with regard to this agreement. The following is an extract:

"It was decided the discount withdrawal was to be done personally with the shoe manufacturers by each respective heel manufacturer. We did not start to follow this plan of discount withdrawal until approximately September 15th, as we were anxious to determine whether or not the opposition were sincere in living up to this agreement. We learned on our first two contacts, namely; Underhills' Limited, Barrie, Ontario and the T. Sisman Shoe Co. Limited, Aurora, Ontario, discounts had been withdrawn by our opposition. These were split accounts. (i.e. they split their business among two or more heel manufacturers.)

We carried on further with this investigation and learned verbally from one of the largest shoe manufacturers in Canada, the Humberstone Shoe Company, Limited, Humberstone, that discounts had not been withdrawn. To stay competitive, we did not withdraw discounts from the Humberstone Shoe Company, Limited. On continuing further with this investigation, we were advised verbally by other shoe manufacturers in Ontario that, if we wanted to continue to enjoy our share of their business, we would have to stay in line with our competitors, as discounts were still in effect.

On the strength of this, we decided that there were no standard of heel prices to shoe manufacturers in Canada and we would continue to leave discounts stand as they were with the few shoe manufacturers who were getting special discounts from us.

It was further decided that we would match the opposition on special discounts anywhere we were sure they existed.

We have been unsuccessful in doing business with Hewetson. Shoes Limited, Brampton, for some years now. Each time we called soliciting business, we were advised our prices were out of line with the opposition. Only recently, I was successful in tying them down to facts and they advised me we would need to meet a 10% discount they were enjoying from the opposition to secure our share of their business.

We have met this discount with the subject company and are now securing a nice share of this business.

Attached herewith find copy of a letter to Mr. C. B. Cooper with reference to Underhills' Limited and T. Sisman Shoe Co. Limited.

The opposition withdrew special discounts from these two shoe manufacturers as of September 1st, 1947. We also withdrew discounts to keep in line with the opposition.

A short time ago, the Panther Rubber Company's sales representative advised Mr. Underhill he knew for a fact that Goodyear were giving special discounts to similar shoe manufacturers making the same price range of shoes as Underhills' Limited.

This naturally upset Mr. Underhill and my explanation to him is contained in the attached letter to Mr. C. B. Cooper. In the same letter, please note what transpired on my call with the T. Sisman Shoe Co. Limited, Aurora, Ontario.

Opposition Activities - Province of Quebec.

Attached herewith find a report, dated September 18th, 1947, received from our Mr. L. J. Gareau, sales representative for the Province of Quebec.

As stated previously in this report, we had only given special discounts to one shoe manufacturer in the Province of Quebec.

On September 15th, 1947, we withdrew special discount from this manufacturer resulting in cancellation of 15,000 pairs of heels. This account very definitely stated that they were still getting a special discount from the opposition. On the basis of this, we reinstated this account and are now getting our share of heel business.

The attached report from Mr. Gareau is a result of a survey we asked him to make with reference to the opposition withdrawing discounts as of September 1st, 1947.

Recently, we asked Mr. Gareau for a specific report on every call made in the Province of Quebec, outlining the reasons why we are not getting our share of this business.

You will note in Mr. Gareau's report, shoe factories controlled and operated by the Corbeil family have a combined yearly production output of approximately 3,900,000 pairs of shoes per year with a potential volume of 1,000,000 pairs of rubber heels per year.

We have been unable to touch this business and to my mind, the reasons are Special Discounts.

Summary

We are firmly convinced that there is no standard of heel and sole prices in Canada today among the rubber heel manufacturers.

Listed below are some of the tactics our opposition use endeavouring to secure business from shoe manufacturers.

1. From split account shoe manufacturers where the opposition had withdrawn discounts as of September 1st, they used this means as an incentive to load the manufacturer prior to discount withdrawal. This you will note in the copy of Mr. L. J. Gareau's letter.
2. We have learned, from time to time, that the opposition salesmen in the field are notified in advance of a tentative price increase and they, in turn, advise the manufacturers of this to secure business.
3. Special discounts in the term of free merchandise had been given in many instances. There is no check-back on this method as this does not appear on their invoice.
4. We have been advised by highly reputable men in the shoe manufacturing industry that actual cash has been offered as an inducement to purchase soles and heels. There is also no check-back on this method of doing business.

The opposition salesmen have openly boasted to various shoe manufacturers that they, the opposition, make the rules and regulations and that we, the Goodyear, fall in line.

It is very difficult to secure concrete evidence in the form of an invoice, etc. from a shoe manufacturer showing discounts from the opposition. To my mind, it only seems right to assume that in places where we cannot sell our product in line with the so-called standard of prices with the opposition, special discounts do exist. From the verbal information I have received from some of the highest calibre men in the shoe manufacturing business, one cannot overlook the fact special discounts still do exist."

(Exhibits 747B, C, D)

The clandestine nature of these discounts and their character as deviations from a norm is illustrated by the paragraph numbered 4 above as also by the following extract from the brief of the industry composed in April 1944 referring to such discounts before the war and already mentioned on page 532:

"We maintain that these statements (by Government officials, to the effect that the shoe manufacturers might not be able to absorb the increased costs occasioned by the withdrawal of the special discounts) reveal a misunderstanding as to the nature of the special discounts. As a matter of fact in most cases the discounts accumulated for a month or more and were then paid to the shoe manufacturers in cash.

On this account they were looked upon more as a buyer's commission than as a trade discount . . ."

(Exhibit 971)

In his letter to C. B. Cooper, also of Goodyear, dated February 6, 1948, Mr. Glass described visits which he made to executives of two shoe manufacturing firms who told him that other companies had reinstated their discounts, with the result that Goodyear did the same (Exhibit 747F).

The other letter referred to by Mr. Glass from L. J. Gareau, Goodyear representative in Quebec, was dated September 18, 1947 and described a conversation Mr. Gareau had with a member of the Panther Company in which the latter stated that Panther had advised all their accounts which were getting a special discount that the rubber companies had agreed to discontinue the discount and, to palliate this price increase, had permitted at least one Quebec shoe manufacturer to place a large order for rubber heels at the old discount (Exhibit 747G).

A letter, dated January 20, 1948, from C. E. Joslin of Panther to David Frupas, of the same company, indicates that Panther was just as concerned about the activities of Goodyear. Mr. Joslin stated, in part:

"Norman Crombie reports that in Ontario, Goodyear are still giving their special discount of 5% to Valentine & Martin, O. J. Smith (two shoe manufacturers); in fact, he states that he saw an invoice for Nov. and Dec. shipments to Valentine & Martin on which a 5% discount appears. I am getting in contact with either Mr. Glass or Mr. Skelton on the telephone and at least let them know that we are aware of what is going on, and that we do not intend to sit back and let this state of things exist amongst the trade when it was agreed that all special discounts would be discontinued as of Sept."

(Exhibit 667)

The evidence discloses, then, that the Companies made an agreement to discontinue granting special discounts, in lieu of an increase in list prices to shoe manufacturers, but it appears that this agreement was not too well observed. Officials of three of the Companies gave evidence about the matter at the hearing as follows:

Mr. Joslin of Panther:

"Q. So that I take it there was an agreement in September, or about that time, among the companies, that these special discounts would be discontinued?

A. There was a discussion that we discontinue the discounts; but it was never lived up to.

. . .

Q. You must have understood there was an agreement, because you say so in that letter, (Exhibit 667) do you not?

A. We had a sort of understanding, yes -- not a gentleman's agreement, but it was an understanding -- but it was not kept."

(Evidence pp. 2335-36)

Mr. Esterson of Holtite:

Q. You did not wipe out the discounts when controls were lifted?

A. No, the Wartime Prices and Trade Board made us put them back, as I told you, during the time restrictions were on. They are in existence today. . . ."

(Evidence p. 2370)

Mr. Glass of Goodyear (asked about the reference to the August agreement in the memo to R. C. Berkinshaw):

Q. . . . Do you recall that?

A. Yes, I do.

Q. Where was that agreement made -- at a meeting? -- you withdrew these special discounts as of September 1?

A. Yes.

Q. Do you recall when the meeting was?

. . .

A. The exact date?

Q. Yes.

A. I don't, no.

. . .

Q. . . . You actually did withdraw the special discounts?

MR. ROBINETTE: The memorandum goes on to point out that when they found no other manufacturer was withdrawing the special discount, Goodyear reinstated it. In other words, they met the competition with competition, is that correct?

THE WITNESS: Yes, that is right."

(Evidence pp. 3125, 3126, 3127)

Mr. Glass then went on to say that as of February 1948 Goodyear had withdrawn all special discounts with the exception of the two companies mentioned in the memorandum. He was then asked:

"BY MR. ROBINETTE:

Q. Mr. Martin asked you if you restored or if you eliminated any special discounts, except to Humberstone and Hewetson. What is the position today? Are there other special discounts given by your company to manufacturers other than Humberstone and Hewetson?

A. Yes, there are.

BY THE DEPUTY COMMISSIONER:

Q. What about the situation as at February, 1948 -- or was that covered by Mr. Martin's question? Were there any others?

MR. MARTIN: Just two.

MR. ROBINETTE: Those are the only two they had found out were being treated specially.

. . .

BY THE DEPUTY COMMISSIONER:

Q. In the past ten months since then others have been added gradually?

A. That is right.

Q. What proportion of your total business to shoe manufacturers today is being sold at a discount?

A. I am not prepared to give that figure right now, as to the overall percentage.

Q. Is it the great majority?

A. No, very definitely not. It is just where we have had to meet opposition."

(Evidence pp. 3128-29)

In his memorandum of February 16, 1948 to R. C. Berkinshaw, Mr. Glass had stated:

". . .

There are 221 leather shoe manufacturers in Canada. Of this number, Goodyear gave special discounts to only 13 (12 in the Province of Ontario and 1 in the Province of Quebec). This figure still stands

to date.

.. ."

(Exhibit 747B)

Although it is evident that some discounts were not in fact discontinued and that at some time after September 1, 1947 the Companies began to reinstate discounts which they had discontinued, it has not been made clear to what extent discounts were given. In an attempt to clarify this question the Commission required the manufacturers to submit returns showing the special discounts which had been allowed to shoe manufacturers during certain periods, but the information submitted was ambiguous in some cases and the facts remain unclear. Panther and Miner indicated in their returns, which were made in 1949, that discounts were discontinued by the end of August 1947; Holtite indicated that it had granted discounts during approximately the first three-quarters of 1947; and Goodyear indicated that about 13 of its accounts had continued to receive discounts through August-December of 1947 and during 1948. This information, however, is obviously at variance with the oral evidence given earlier. The conclusion appears to be that the agreement, while not too well observed, was far from ineffective.

Evidence of an ancillary industry agreement bearing upon prices is contained in a letter from A. A. Esterson of Holtite to his sales representative in Toronto. The letter is dated March 5, 1948:

"I have your letter of the 7th, regarding the sample bags you sent me for the repairers. You overlooked the fact that we are not allowed to sell repair tags. You know that repair tags are a requisite for repairers, and it is a very good thing. Yet, many years ago, we did sell repair tags with our advertising on, and it was construed as a premium, therefore, it was done away with. Now, these bags are in the same category. If I were to print Cat's Paw on these bags and sell them, even at a profit to the repairer, we wouldn't be allowed to do it, because we are not allowed to give anything that is a premium. It is for this reason, that we cannot go into the bag business.

I hope this clarifies the matter for you."

(Exhibit 687)

Mr. Esterson stated in evidence that when he wrote "we are not allowed" he meant his associates in the Holtite company, and not the other companies in the industry. However it might be noted that this matter was the subject of an agreement made at a meeting held on November 22, 1943 evidently continued into the post-control period. The minutes contain the following entry:

"Advertising: It was noted that prohibition of advertising rubber articles for sale had been withdrawn.

It was agreed that, for heels, soles and soling, rubber company advertising would be limited to show-cards, newspapers and trade journals.

There are to be no free repair tag or premium inducements offered."

(Exhibit 978)

The price lists of the four companies indicate a standard 2 per cent cash discount, but the evidence does not indicate how this was arrived at.

(b) Prices to Jobbers

There is no evidence in the post-control period of agreements which relate expressly to list prices to the shoe findings trade. The minutes of meetings held subsequent to controls contain no direct references to agreeing upon list prices. The correspondence indicates, however, that the Group did continue to discuss prices. One witness stated at the hearing that prices were the subject of agreement as of May 1947 and another witness, who denied this, stated that prices were in effect the same at that time for similar products. The documentary evidence which is referred to in the succeeding sections of this Chapter establishes agreement in respect of jobbers which is consistent only with an overall price agreement.

A letter dated June 13, 1947 from G. B. Smith, Secretary of the Association, to the members of the Group, indicates that the practice of discussing and agreeing upon matters relating to prices was still being maintained. The contents of this letter are as follows:

"Mr. George Glass of Goodyear has been in touch with me to advise that he finds himself under the necessity of printing some additional price lists for heels and soles for the Jobber and Repair Trade and is desirous of including the 10% price increase granted by the Wartime Prices and Trade Board some time ago in the prices shown in the new price lists. He wished to make sure before doing so that other companies would have no objection.

If I remember correctly, our sole reason for not putting out new jobbers' prices including the 10% increase was that we were in hopes that we might get some further price increase and we did not wish to have to do the job twice. I might point out also that the new manufacturers' price lists include the 10% increase granted on heels for that class of trade.

I should be glad to have your views on this at your earliest convenience."

(Exhibit 310)

The members also continued to exchange information. An exchange of letters between A. A. Esterson of Holtite and D. Prupas, Sales Manager of Panther suggests that prices were the subject of agreement. On June 6, 1947 Mr. Esterson wrote to Panther:

"When we made the change on the Jobbers tan whole, boy's whole, etc., you did not send me a new price list showing these changes of your Jobbers list. Will you please send me one to Baltimore, as I want to compare it with ours for any discrepancies. . . ."

. . ."

(Exhibit 666B)

Mr. Prupas replied on June 17:

". . ."

Answering your letter addressed to our Mr. Joslin regarding the changes made on jobbers tan whole heels. Our prices for mens and boys whole heels, black and tan, (sub-standard) are:-

	<u>Blk.</u>	<u>Tan:</u>
Mens Whole Heels	2.00	2.20
Boys whole heels	1.80	1.95

Our price list will be ready for mailing very shortly, at which time a copy will be sent to you.

. . ."

(Exhibit 666A)

Mr. Esterson answered this letter on July 1, 1947:

"Replying to your letter of the 17th, the prices that you gave me for your Mens Whole and Boys Whole, I suppose are your Eastern prices and they are correct, plus 10% of course, which you do not state. On the Western prices however, Mens Whole Heels Black are \$2.15, Tan \$2.35. On Boys Whole Western prices Black is \$1.95, Tan is \$2.10. All of these are subject to plus 10%.

It has been brought to our attention that your Western Jobber have the Eastern price and evidently this must be an error. I would appreciate your checking into it, and advising me to Baltimore regarding the same.

. . ."

(Exhibit 660)

An exchange of correspondence between F. T. Yates of Goodyear and C. E. Joslin of Panther illustrates their attitude towards price cutting

and that the manufacturers made concerted efforts to maintain prices to jobbers. Mr. Yates wrote to Mr. Joslin on May 8, 1947 referring to a conversation he had with a Panther salesman about an attempt by a Toronto firm of shoe findings distributors to obtain a large order of heels at special prices. The following extract is from this letter:

"We also talked about the Adams Company trying to buy a large order of heels at a special price to go out and cut prices. We were approached by them the week before last wanting us to sell them five hundred or one thousand gross at a better price. This, we refused to do, and Mr. Glass tried to point out to the Adams Company what a foolish move it was to make at the present time, when there is a chance of them all going out and making a margin of profit. However, they seemed determined to get heels from someone and go out and upset the market. They no doubt have a large stock of heels at the present time, but if everyone would stand pat and not fall for this order at a cut price, they can only go so far.

. . .

I am just passing this information on to you and can assure you that we will not be a party to selling heels at a cut price to anyone at the present time."

(Exhibit 661B)

In his reply (Exhibit 661A) Mr. Joslin stated that his company was also approached by the Adams Company, and that he had taken the same attitude as Mr. Yates, and "would not be a party to any cut price proposition."

When questioned about these exhibits at the hearing Mr. Joslin denied that there was any agreement on prices:

"Q. . . . At this time, in May, 1947, was there any agreement amongst the manufacturers of heels and soles in Canada, oral or written, with respect to prices?

A. No, there was not any agreement on prices.

Q. In actual effect, were prices on similar articles the same?

A. Yes.

Q. That is, list prices?

A. List prices because, if our prices were higher than our competitor, we would not be in business. We would have to sell at the same price as our competitor or lower. We would have to sell at the same price as our competitor or lower and we could not actually sell lower because we did not want to cut ourselves out of business."

(Evidence p. 2312)

On the other hand, Mr. Yates, when asked at the hearing about the same correspondence, stated that there was an agreement on prices at that time. He was asked:

"Q. This is May of 1947. Can you tell me if at this time there was any understanding or agreement between you and the manufacturers of heels and soles with respect to prices?

A. The same agreement that we had, or understanding, was in force. I figured we were all maintaining it.

Q. The prices of similar products of each company were the same?

A. Yes."

(Evidence p. 3078)

C. Discounts to the Shoe Findings Trade

The agreement which was made before controls and varied during controls establishing the jobbers' discounts was not subsequently varied during the period covered by this Report. The industry recognizes two classes of accounts entitled to discounts from list prices:

- (1) Jobber-Distributors and Local Jobbers who receive discounts of 20 per cent and 5 per cent.
- (2) Accommodation Jobbers who receive a discount of $12\frac{1}{2}$ per cent.

In 1948 Panther, Holtite and Goodyear were selling to Jobber-Distributors and were granting the 20 per cent and 5 per cent discounts. Panther and Goodyear were also granting the $12\frac{1}{2}$ per cent discount to Accommodation Jobbers. Holtite did not sell to Accommodation Jobbers. A cash discount of 2 per cent for payment by the 10th of the month following shipment was also given.

D. Recognition as Jobbers

Agreement upon who shall be recognized as jobbers entitled to

the same discounts has two important effects. In the first place it restricts entry into the distributing field to a degree depending on the severity or lightness of the qualifications required for recognition. A prospective jobber must obtain the approval, not merely of the manufacturer with whom he wishes to deal, but of all the manufacturers. The fact that each manufacturer may commit himself in advance as to the qualifications he will recognize makes each decision no less a Group decision. In the second place, it enables the manufacturers to control the number of firms entitled to enjoy discounts from the list prices and therefore helps to maintain the uniformity of the price structure. An agreement upon jobbers' prices would be in danger of becoming ineffective if "jobber" were not defined and a manufacturer were free to offer such prices to anybody, including a retailer.

Where there exists in an industry distributing through jobbers an agreement to fix and maintain uniform prices, it is usually essential therefore that there also be agreement upon who are jobbers. Conversely, evidence of an agreement to establish a uniform industry jobbers' list points to the existence of an agreement on prices because it is difficult to envisage a number of persons who are actually in competition tying themselves down to agreement upon such an important point as the channels through which they will seek to distribute their merchandise.

By the time price controls were lifted in April of 1947, at the latest, each company was free to deal with whatever jobber accounts it wished, both with regard to supplying new jobbers and refusing to supply old ones. The members of the Heel and Sole Group, then, as previously, approached the selection of their jobbers collectively rather than individually.

At a meeting of the Group held on April 9, 1947 it was decided that the jobbers' lists of the Companies should be revised and that a master list should be prepared. The following is an extract from the minutes of this meeting:

"With reference to a general revision of the list, the Secretary mentioned that with price control over heels and soles suspended, it would now be possible to delete unsatisfactory accounts from the jobbers list.

It was agreed that all companies would submit their jobbers list to the Secretary immediately for comparison and consolidation into a Master List."

(Exhibit 853)

The Companies did send in to the Association their jobbers' lists, and a master list was prepared and distributed to the members along with the following covering letter, dated May 12, 1947 from A. U. Oakie, Assistant to the Secretary of the Association:

"As agreed at the last Heel and Sole Meeting of April 8th, all companies have now submitted their Jobbers' List which we have consolidated into a Master List, and a copy is attached herewith for your information.

Will you kindly arrange to review this list carefully so that it may be discussed at the next Heel and Sole Meeting."

(Exhibit 332)

Attached to this letter was a list of "Jobber-Distributor and Local Jobber" accounts and "Accommodation Jobber" accounts covering the whole of Canada. This Master List was reviewed at the meeting held on July 9 and a number of firms were deleted, while a further number were deferred for checking and consideration at the next meeting (Exhibit 852). This consideration was given at the meeting held on August 6 (Exhibit 851).

Concurrently the members of the Group had occasion to consider applications for inclusion in the Jobbers' List, and this was done at meetings at which decisions were made either to refuse or accept these applications. The terms in which this matter was from time to time dealt with negative any idea that the Master List was merely a compilation, for purposes of information, of all persons whom any manufacturer chose to recognize as a jobber and establish quite clearly that it was a list of persons accepted by all manufacturers as the persons and, for the time being, the only persons who were entitled to jobbers' prices.

The evidence indicates that the Companies adhered to the practice of following the Master List in sales to the shoe findings trade and of clearing applications at meetings of the Group. The following extracts from correspondence show that the members of the Group made positive efforts to maintain a uniform jobbers' list.

On May 19, 1947 G. B. Smith wrote to all the members:

"I am in receipt of a letter from Mr. A. A. Esterson, of Holtite Rubber Company, recommending the above-mentioned account for inclusion in the Heel and Sole Jobbers' List. . . .

Mr. Esterson requests that this matter be handled by mail rather than being held over for the next Heel and Sole meeting. I shall be grateful, therefore, if you would advise me as soon as possible if you are agreeable to inclusion of this account in the Heel Jobbers' List."

(Exhibit 309)

C. E. Joslin of Panther was of the opinion that such matters should be disposed of at a meeting and wrote Mr. Smith to that effect on June 2:

"In reply to your letter of May 19th regarding Mr. Esterson's request that we place Mr. Murafsky on the Jobbers List. I believe

that these items should be discussed at our meetings rather than by correspondence.

As you know, we have Mr. Quigley, of London, Ontario, who also wishes to be placed on the jobbers list, and we are waiting for a report on same."

(Exhibit 654)

The minutes of the meeting held on July 9 contain an entry to the effect that a number of accounts were considered, and the names of Quigley Leathers and M. Murafsky were added to the list (Exhibit 652).

On September 27, 1947 Mr. Esterson of Holtite wrote to Mr. Prupas of Panther complaining that a shoe manufacturing customer of the latter company was selling their heel and sole products to the repair trade. Mr. Esterson stated that since this company was not recognized by the Association as a jobber they should not be allowed to resell products which were sold to them for making shoes (Exhibit 659B). In his reply to this letter Mr. Prupas indicated that he was taking steps to see that this practice was stopped (Exhibit 659A). It should be noted that the purpose of the complaint was not only to secure adherence to the jobbers' agreement, but also to prevent a shoe manufacturer from re-selling heels and soles which he was able to purchase at prices lower than those charged to jobbers. This practice was known as "bootlegging" and had been dealt with by the Companies on previous occasions.

On October 30, 1947 G. R. Glass of Goodyear wrote to the secretary of the Association asking that the application of a small shoe manufacturing firm be considered for inclusion in the Jobbers' List at some future meeting (Exhibit 753). On November 3, 1947 Mr. Prupas of Panther wrote to the Association requesting similar consideration for the same company. He explained that it was setting up a special department to handle heels and soles for sale to the repair trade (Exhibit 651).

A letter dated November 4, 1947 from Mr. Prupas of Panther to the secretary of the Association shows the degree of compliance with the agreement:

"While away on a trip during the week of Oct. 24, our office received a request for a jobbers price list from A. L. Breithaupt Findings Co., 166 Margaret Ave., Kitchener, Ont. In this same letter they informed us that as United Shoe Machinery Co. has discontinued jobbing findings, they would like to take over our brand of merchandise. Unfortunately, the clerk in our office, anxious to please a customer, sent a jobbers price list to these people with an accompanying letter advising that we would be most pleased to serve them.

Of course, there was nothing I could do at the time towards stopping this and we today received an order from these people. After questioning this clerk, who has a certain amount of responsibility, I was informed that we, prior to 1937 had this company on our books as a legitimate jobber, on the strength of which the price list was sent

to them.

I would appreciate if you will take the necessary steps to acknowledge this firm as authorized jobbers, . . ."

(Exhibit 652)

Minutes of meetings and correspondence also disclose instances where the Companies as a group refused applications of firms to be dealt with on a jobber basis. The application of a Chicoutimi firm was considered at the April 9, 1947 meeting, and decision postponed until the next meeting (Exhibit 853). At the July 9 meeting the application was "deferred indefinitely" (Exhibit 852). Apparently this application had not been accepted by November, for on November 3 Mr. Prupas stated in a letter to the secretary of the Association that there was no jobber in Chicoutimi and recommended a different account for such recognition (Exhibit 651).

The minutes of the August 6, 1947 meeting (Exhibit 851) contain a list of four firms which were deleted from the Jobbers' List. No reasons were given in the minutes, although it was stated in evidence that one of the deletions represented merely a change in name of a company. The minutes of the August 6 meeting also contain the following entry:

"The Secretary read a letter dated July 30, 1947 from G. L. Griffith & Sons Ltd., expressing surprise that the Prince Rupert Supply House, Prince Rupert, B.C. was not included in the list of Jobber Distributors & Local Jobbers. None of those present could recall this firm ever having been included in the list, and it was felt that it would not be desirable to add it. However, the Secretary was instructed to advise G. L. Griffith & Sons that there would be no objection to them selling to the Prince Rupert Supply House on the same basis as to Jobber Distributors & Local Jobbers."

(Exhibit 851)

The minutes of the meeting held on September 10, 1947 contain an entry which sets out the reasons for one refusal to sell an account at jobbers' prices:

"JOBBER'S LIST: The Secretary referred to a letter dated August 6th, from G. L. Griffith & Sons regarding the deletion of the Norris Shoe Co., Sudbury, Ont., from the Jobber-Distributor list.

The meeting was of the opinion that the deletion should be confirmed for the following reasons:

1. It is understood that Norris Shoe Co. operates a large shoe repair shop and by buying at jobbers' prices secures an unfair advantage over other shoe repairers in the district. (In this connection, it was pointed out that several similar accounts were deleted from the list at the July 9th meeting, namely V. Scarcello, Port Arthur Ont., and West End Shoe (A. Albanese), Sault Ste. Marie, Ont.

2. It is understood that the Norris Shoe Co. does not meet the qualifications necessary for classification as a jobber, e.g. at least one salesman covering the trade and proper warehousing facilities to carry stock."

(Exhibit 850)

This exhibit deserves some comment from the standpoint of the significance, already touched on, of agreement upon jobbers. In an industry such as this, no exception could be taken to the individual decisions of a manufacturer not to recognize persons as jobbers unless they possessed certain qualifications. In making such a decision the manufacturer would be governed by considerations of the business he was likely to acquire through the new connection, the cost of servicing the account, the ultimate effect upon sales through his existing jobbers and so forth. On the other hand, it is hard to see him agreeing not to recognize an account as a jobber if there were no understanding as to jobbers' prices. Taking the above as an example, if there were no understanding as to the prices a manufacturer would apply, then a manufacturer, without calling the account a jobber or tagging it with any particular name, could sell it at the price he chose and the joint action upon jobbers would be quite meaningless.

An exchange of correspondence relating to an attempt by a firm in Sault Ste. Marie to obtain jobbers' prices indicates that the industry agreement was adhered to. When the Master List of Jobbers was revised at the July 9, 1947 meeting, the Albanese firm of Sault Ste. Marie was among those which were deleted (Exhibit 852). That meant that they would not be sold as jobbers. On December 6, 1947 Mr. Esterson of Holtite sent the following letter to Mr. Prupas of Panther:

"I have a letter from E. Albanese of Sault Ste Marie stating that you are giving them the full jobber's discount whereas, we are not because they are not on the jobber's list any more. Will you please advise me promptly in this connection, so that I will know what the situation is. For we have advised this party that we can not give him a jobber's discount, inasmuch as he is not on the jobber's list.

. . ."

(Exhibit 657B)

Mr. Prupas replied on December 11:

". . . we wrote this customer on Sept. 20 informing him that we could no longer continue selling him as a jobber inasmuch as he is operating

a shoe repair shop on the same premises. We at the same time informed him that any orders on hand would be executed as per original arrangements but all future orders would have to go through at regular list prices. Since then we have received several communications from this customer, the last one in which he informs us that he has approximately \$10,000 worth of stock on hand, claiming that if we did not equalize his stock (i.e. replenish the missing items so as to round out the stock) he would be subject to a loss.

We therefore agreed to send him one shipment of merchandise,
. . ."

(Exhibit 657A)

On December 31, 1947 Holtite received a letter from E. Albanese, the customer concerned, which stated, in part:

"I have received your letter about a week ago, you sold me the rubber heels and only took off 15%, this you did not advise me of. . . . There is only one thing that I could make of this and that is you have written to the Panther Rubber Co., to get me off the jobbers list. I am asking you to try and keep me on the jobbers list as business is picking up much better since my son is back from the army. He goes up the line and does a great deal of business there, However there is no sense in taking us off the list as we do most of the business with our shoe repair men. We are getting all other supplies at jobbers price so why not keep us on the list, if you are thinking of taking us off the list it will put us in a bad condition, as we have a great deal of stock left. . . .

. . ."

(Exhibit 691)

Mr. Esterson replied to this letter on January 13, 1948:

". . .

. . . we are unable to ship to you at present on a jobbers basis; however, if you wish, we can ship to you and allow you a 15% discount. We regret that we cannot take orders on any other basis.

In your letter you state that your son is now working for you and goes on the road selling. In order for us to help you get on the jobbers list, please advise us where you keep your stock for the jobber trade. Is it kept with your repair stock or separate? . . .

If you will let us have this information, we will do all we can in getting you on the jobbers list."

(Exhibit 692)

A letter dated February 2, 1948 from Mr. Esterson's assistant, D. Shayte, to Holtite's sales representative in Toronto, indicates that the acceptance of Mr. Albanese as a jobber depended on agreement in the industry:

"I have your letter of January 30th to Mr. Esterson regarding his correspondence with A. (sic) Albanese. Mr. Esterson . . . had been corresponding with Albanese to find out if Albanese should be back on the jobbers list. There is nothing that can be done about this matter until the next rubber association meeting, . . ."

(Exhibit 689)

The foregoing evidence indicates that the three companies supplying the shoe findings trade met together and agreed upon common lists of jobber accounts throughout Canada, rejecting certain applicants who did not conform to the agreed upon qualifications.

The testimony of officials of the three companies, when asked about the correspondence quoted above, was generally to the effect that although discussions about jobbers took place at meetings and a Master List was prepared and issued, at the same time they felt perfectly free to add jobbers without communicating first with anyone else, and that discussion at meetings was nothing more than a formality.

C. E. Joslin of Panther was asked if there was any agreement that a jobber would not be added without the approval of the other companies. He replied:

"A. Not a hard and fast agreement; there is only one way, there is a jobbers' list and if we have a jobber we enter it with the jobbers' list. This man is on the jobbers' list. If a man applies to us to be put on the jobbers' list we generally consult the list to see if he is on there and then we make inquiries as to the possibility of him being a jobber, what his financial responsibilities are, if he is capable of carrying a stock of heels to service the trade.

Q. Are there any requirements for a jobber?

A. Yes, we have requirements. We require a man to be put on the jobbers' list to be able to carry a stock of merchandise to service the shoe trade; also have salesmen to go around and call on them and sell merchandise."

(Evidence pp. 2287-88)

Mr. Joslin was asked if he recalled the Master List of Jobbers referred to above (Exhibit 332, dated May 12, 1947) and he replied:

"A. I recall a list similar to this, but it was incomplete, so far as we were concerned. It was not a complete list -- not according to our list that we had. We made some notations. It was never completed, so far as I am concerned . . .

Q. It must have been done as the result of a discussion at a meeting, because I think the covering letter indicates that. It is referred to as a master jobbers' list.

A. Yes, for reference for heel manufacturers, for their own information, to keep them posted. But it is not complete today. In fact, I know it is not a complete list today, at all."

(Evidence p. 2299)

Further in his evidence Mr. Joslin was again asked about the Jobbers'

List:

"Q. What is the situation today with respect to the jobbers' list? How does a name get on the list?

A. He applies to the company; and in that way, when we have these meetings -- there is a general discussion of trade and merchandising, which is beneficial to all of us. And these jobbers come up, and these fellows are mentioned -- that there is a Mr. Quigley, or a Mr. somebody else in a certain locality, and that we have been approached to put him on our jobbers' list, -- 'What do you fellows think? Do you know anything about him, or about his business?'"

(Evidence p. 2316)

Mr. Joslin gave his evidence in November 1948.

A. A. Esterson of Holtite was asked if he recalled whether jobbers were discussed at meetings and he replied:

"A. Yes, they were always discussed at every meeting, as to whether they are on the list or not on the list. If I thought they should go on the list, I sold them, regardless of whether other men wanted to sell them or not -- just the same as I said this morning."

(Evidence p. 2475)

Mr. Esterson was asked later on about the correspondence dealing with E. Albanese and he stated that the purpose of his writing to Mr. Prupas was to ascertain whether Mr. Albanese was a jobber with a separate establishment as such. Mr. Albanese had been taken off the list because he was running a repair shop in conjunction with the jobbing

business. He put the Shayte letter down to the "vernacular" of the author who had been with him less than two months. Mr. Esterson stated that eventually Mr. Albanese separated the two businesses and was then being sold at jobbers' prices.

G.R. Glass of Goodyear said he considered himself free to add jobbers without consulting anyone. He was asked what would be the purpose in discussing the matter at meetings if the companies were free to keep their own lists:

"Q. You were present when this was discussed. Why would these things be discussed? Why would the question of these jobbers being added or deleted from the list be discussed at the meeting if each company kept its own list?

MR. ROBINETTE: He did not say each company kept its own list.

BY MR. MARTIN: He said Goodyear did?

A. We kept our own list. We have a general idea who we are going to sell in the trade.

. . .

A. We did receive a copy of the master list. We went our own way. We did not act upon that ourselves. We may have agreed to delete certain names, but we sold to accounts we felt were capable of carrying our product."

(Evidence pp. 3116-17)

Mr. Glass was shown Exhibit 753, in which he asked the Secretary of the Association to place the name of Alphide Gerard & Son on the agenda for discussion at a future meeting. He was asked why he was writing to Mr. Smith about it, and replied:

"A. We did have a tentative jobber list who we felt we should sell to; that is, we did sit down and discuss these various jobbers. . . .

. . .

Q. Why would you write Mr. Smith about it?

A. In view of the fact there is a master copy of a jobbers' list.

. . .

A. To have the subject discussed.

. . .

Q. If you decided to put him on the jobbers' list, why would you bother writing this letter to Mr. Smith?

A. I cannot tell you that."

(Evidence pp.3117-18)

E. Range

In physical appearance rubber heels and soles are substantially standard products, and they are not products in respect of which a consumer ordinarily asserts much individual preference. It would also appear that within each of the three markets (i.e. shoe manufacturers, the shoe findings trade and chain stores) products are much of the same quality. An exception to the standard qualities may be the premium priced or "super quality" products made by two of the manufacturers for the shoe findings trade. In the absence of price competition it is probable that competition today depends upon proficiency in advertising rather than differences in quality.

During the period of controls the heel and sole industry had been restricted in the amount of crude or natural rubber which could be used in the manufacture of their products. When these restrictions were lifted the Companies agreed collectively to control the use of crude rubber themselves.

The minutes of the meeting of April 9, 1947 contain an entry referring to the effect of the order ending controls and also a reference to the proposed use of natural rubber in a limited way. The entry is as follows:

"DISSOLUTION OF RUBBER CONTROL: It was noted that with the end of Rubber Control, effective April 1st, there were no longer any restrictions on the use of natural rubber in heels and soles, etc., nor on the production of coloured lines of heels and soles.

One of the companies announced its intention of using a small percentage of natural rubber in its products in order to facilitate processing in the factory, and to improve the quality of its products."

(Exhibit 853)

It appears, however, that in fact the Companies made an agreement at this meeting that natural rubber would be used only to a limited extent and that the fact that natural rubber was being used at all would not be made known to the public. This is indicated in a memorandum written by G. R. Glass on August 1, 1947 to another member of the company, in which he stated:

" . . .

The Rubber Association held a Meeting in Montreal, April 9th, and it was verbally agreed by The Panther, The Holtite and the Miner Rubber

Companies and ourselves that crude rubber would be used for shoe products only as each company saw fit with reference to colored soles and heels, such as red or white or to be used in small quantities where necessary for some types of light gravity soles. It was also verbally agreed at that time by all concerned that no one company would advertise the use of crude rubber as it was felt it would be detrimental to the future use of G.R.S., and that if each company launched into a crude rubber programme that the possibility of rubber control may be forced upon the shoe industry again.

. . ."

(Exhibit 754)

Sometime between April and July 1947 this agreement was broken by Panther, which began to produce and advertise a line of no-mark natural rubber heels.

At the meeting of July 9, 1947 the Companies agreed that the use of crude might be extended. The following extract is from the minutes:

"USE OF CRUDE RUBBER:- Agreed that pre-war crude rubber compounds may be used in heels, soles, soling slabs, etc. for both the jobbing trade and manufacturers. . . ."

(Exhibit 852)

It was also agreed at the July 9 meeting the Companies would not in future make any radical changes without clearing them at a meeting:

". . .

CHANGES IN COMPANY PROGRAMS: On a motion by Mr. Esterson, (Holtite) seconded by Mr. Simpson (Miner) and carried unanimously, it was agreed that companies should not make any radical changes in their lines or selling programs without having previously cleared them at an industry meeting.

. . ."

(Exhibit 852)

Another agreement which was made during this period related to the production of no-mark products (i.e. black heels which will not mark floors - all tan heels are non-marking). The agreement is contained in the minutes of August 6, 1947:

". . .

NO-MARK PRODUCTS: Panther also reported that it was felt they would have to continue to offer no-mark products in their super quality line for the time being. All companies agreed that no-mark products will

not be made in the standard quality line without prior notice to the industry. All no-mark products are to be classed as tan goods.

. . ."

(Exhibit 851)

The oral evidence also indicates that the Companies made efforts to maintain uniformity in the size and type of products. Mr. Joslin was asked at the hearing whether there were agreements to standardize various lines. He replied:

"A. Well, when we get together we discuss merchandising and qualities, what should be given to the trade, and this is on our suggestion, here. We had been working on and were about ready to put out a black No-Mark heel. We told them we were going to put the No-Mark heel on the market, and we followed through on it. Of course, the general trend of this discussion around the table was that we should, at that time, notify and try to standardize throughout the industry what we were putting on there. During the war, you know, when we were under controls, the government standardized almost everything and it had seemed to work out so well, people thought, well, gee, why not stay on it rather than just chasing all over the goose pasture making different lines. We did not follow that because we were the first one to put in the No-Mark heel. We went right through with it."

(Evidence pp.2330-31)

Mr. Joslin stated that there were no agreements to standardize lines, but merely discussions.

Mr. Glass of Goodyear indicated, however, that there were such agreements. He was asked about the agreement not to make any radical changes without first clearing them at a meeting:

"Q. . . . Do you recall any discussion about that at this meeting?

A. Yes, I do; to my mind that is with reference to the product.

Q. You mean the range?

A. The range of product, to keep a uniform type of product in regard to size, et cetera. We control our own quality, ourselves.

BY THE DEPUTY COMMISSIONER:

Q. That is, bringing out a completely new type or size?

A. That is the idea. In the industry, there might be a larger heel required to fit a certain type of shoe. We had agreed to have a similar product there.

Q. I think you said not necessarily similar in quality of compound?

A. Design and type."

(Evidence pp. 3112-13)

The evidence obviously does not indicate any very formal understandings in respect of range, but it appears from all the evidence that in actual practice such a degree of uniformity was maintained as to make possible the erection thereon of a common pricing structure.

PART VII - VULCANIZED RUBBER CLOTHING

Chapter 1 - Introduction

A. Products Manufactured

Vulcanized rubber clothing (also called vulcanized waterproof clothing or protective rubber clothing) is a special type of heavy waterproof clothing made from rubber applied to cotton fabric and vulcanized. It is worn by such workers as miners, policemen, fishermen, postmen, firemen, farmers, cartage men and construction men. They prefer it because it is waterproof rather than merely "shower proof", long-wearing and pliable. It is not suitable for general street wear because of its weight and construction. The market for the product is, therefore, pretty closely circumscribed, but it is, at the same time, very stable.

The chief garments manufactured in this industry are various coats, mining and fishing jackets, pants and hats, aprons, capes and leggings (Exhibit 211) and of these products the principal item is perhaps the coat. Few changes in the manufacture of these garments have taken place during the last twenty years.

B. Companies Involved in the Investigation

Between the years 1938 and 1948 (the period covered by this Part) there were never more than four manufacturers of importance in the vulcanized rubber clothing industry at any one time. Latterly these were:

The Miner Rubber Company Limited of Granby, P. Q., which began producing protective rubber clothing around 1917. For some years it was the only producer and has always been the major producer.

Kaufman Rubber (Ontario) Limited of Kitchener, Ontario, which is solely a manufacturing company and operates in conjunction with Kaufman Rubber Company Limited, also of Kitchener, the sales company. Production of vulcanized rubber clothing was begun a few years after Miner commenced in 1917.

Canadian General-Tower Limited of Galt, Ontario, or its predecessor - The Canadian General Rubber Company Limited, manufactured vulcanized rubber clothing since 1935. Between 1938 and 1946 Tower Canadian Limited, a subsidiary of Canadian General Rubber, sold vulcanized rubber clothing which was made for it by the parent company. In 1946 Tower Canadian Limited and Canadian General Rubber were merged to form Canadian General-Tower.

Barringham Rubber & Plastics Limited of Oakville, Ontario, which started manufacturing vulcanized rubber clothing in 1939 and discontinued in the latter part of 1946, although sales were made up to and including 1948.

During the war a small company, the National Tent and Awning Company, of Toronto, Ontario, started making vulcanized rubber clothing but, according to the evidence, disappeared from the scene some time afterwards and, in any event, was not considered as an important competitive factor in the trade.

Another company, St. Lawrence Rubber Co. Ltd., of Farnham, Quebec, made some preparations to manufacture vulcanized rubber clothing in 1947 but never went into production. Since 1946 there have been only three manufacturers in the industry, viz: Miner, Kaufman Rubber (Ontario) Limited and Canadian General-Tower.

C. Volume of the Market and Miner Leadership

In 1948 the market for vulcanized rubber clothing was supplied by Miner, Kaufman, Canadian General-Tower and Barringham, although the latter's sales in that year were less than \$2,000. Sales figures submitted by the Companies for the years 1938 to 1948 inclusive show that throughout this period Miner consistently led the field. During these years Miner, on the average, accounted for more than 60 per cent of the total sales of the Companies in the industry. Its domestic sales have averaged out to about 60 per cent of the total domestic sales of such Companies. During the period 1945 to 1948 inclusive the average shares of the total domestic sales in Canada were approximately as follows:

Miner	53%
Kaufman	25%
Canadian General-Tower or predecessors	18%
Barringham	4%

In export sales Miner has been far in the lead, having accounted for, during the eleven-year period, approximately 80 per cent of total export sales.

Barringham has never accounted for as much as 10 per cent of industry sales and was not a significant factor in the export market. It is of course no longer a competitor in this industry, and sales are now divided among the three other companies, the proportions for Miner Kaufman and Canadian General-Tower in 1948 being about 60 per cent, 20 per cent and 20 per cent, respectively.

The following table shows the total sales for the above companies of vulcanized rubber clothing from 1938 to 1948 inclusive:

Table I

Total Sales - Vulcanized Rubber Clothing

<u>Year</u>	<u>Domestic</u> \$	<u>Export</u> \$	<u>Total</u> \$
1938	290,526	82,164	372,690
1939	377,343	94,737	472,080
1940	516,983	73,565	590,548
1941	1,346,172	201,826	1,547,998
1942	1,188,562	139,939	1,328,501
1943	1,220,000	86,254	1,306,254
1944	602,873	192,580	795,453
1945	649,148	108,441	757,589
1946	756,539	184,741	941,280
1947	747,714	235,988	983,702
1948	661,201	176,854	838,055

Note: Figures include sales tax, except for Barringham between 1939 and 1944 inclusive. Figures for Barringham for 1945 to 1948 inclusive were corrected to include sales tax of 8 per cent.

Source: Returns submitted by Companies.

D. Methods of Distribution

Vulcanized rubber clothing reaches the retail trade either direct, through agents or branches, or through jobbers by way of resale. Miner sells an estimated 60 per cent of its clothing through jobbers, and most of the remainder to the retail trade through branches. A small portion is sold direct to a few large consumers, such as the Post Office Department. Many of the Miner jobbers are also footwear jobbers, and the rest are a general line of jobbers who handle dry goods, hardware, etc. Kaufman, on the other hand, distributes an estimated 60 per cent to 70 per cent of its clothing to retailers by direct contact selling, most of the rest is sold through jobbers and there are some sales to large consumers. Canadian General-Tower sells an estimated 60 per cent through jobbers, most of the rest direct to retailers through branches and in a few cases direct to large consumers. Some large retailers, chiefly the large department stores, are dealt with direct on the same basis as jobbers. Generally speaking, vulcanized rubber clothing is sold at list price to retailers and at list price less a trade discount of 15 per cent and a cash discount of 2 per cent to jobbers.

E. Other Products

There are many kinds of waterproof clothing and they vary considerably with regard to use, quality and price. Certain types are manufactured for sale to a particular class of customer. As has already been indicated, vulcanized rubber clothing is one of them. Its wearing

and rainproof qualities and strength to withstand hard usage make it particularly suitable in such occupations as that of the miner, the fisherman and the policeman, while, at the same time, its weight and construction make it unacceptable for purposes of general apparel. Vulcanized rubber clothing best meets the requirements of the occupations above mentioned and it enjoys most of this market.

The development of plastics may have some effect on the market in the future, but generally speaking, during the period covered by this Report, plastics were not considered by the Companies to be a competitive factor. The evidence of Edward Barringham of Barringham Rubber & Plastics Limited describes the attitude of three of the producers:

"Q. I think you mentioned that you sell some types of plastic materials to other companies that make it up into waterproof clothing. Are there any of these companies, to your knowledge, that make it up into lines which, even though to a limited degree, might be considered competitive to that of the vulcanized clothing line?

A. NO, to my knowledge there has not been anything developed yet that is competitive with rubber in that field . . ."

(Evidence p. 2675)

However the evidence is not unanimous on this point. A. J. Graham, Vice-President in charge of sales of Canadian General-Tower, stated that plastic clothing was definitely competitive to vulcanized rubber clothing (Evidence pp. 723-25). His company manufactured a plastic suit for fishermen and miners which was said to last much longer than any other, but which was 15 per cent higher in price. Whether or not this was a quite recent development was not brought out in evidence, but it does appear from the evidence that the other companies did not consider that the development of plastics had at that time reached a directly competitive stage, although it may have had some controlling effect on the price of vulcanized rubber clothing. The evidence of Mr. Barringham suggests however that the prices of vulcanized rubber clothing would continue to ensure its popularity until other prices were reduced. The same was true of nylon garments which were too expensive to enter substantially into competition with vulcanized rubber clothing.

The only other product which is manufactured specifically for sale to the same class of customer is oiled clothing. An employee of one of the Companies stated that by 1932 the trade in oiled clothing had been very hard hit by the appearance of vulcanized rubber clothing on the market:

"Q. About what period was it when rubber clothing very definitely took the place of oiled clothing?

A. I would say it was during the late twenties, around there. It was some years prior to 1932, because we were feeling pretty badly about it then."

(Evidence p. 738)

F. Imports

Imports of vulcanized rubber clothing are apparently not of sufficient importance to provide any competition to the Canadian manufacturers. W. H. Miner, President of Miner, in his evidence said:

"Q. Are imports a factor with reference to clothing with which you have to concern yourself?

A. No.

Q. Is that answer true for the whole period since 1935?

A. I would say so, yes."

(Evidence p. 944)

This evidence was confirmed by C. D. Pequegnat, Sales Manager of Kaufman (Evidence p. 620) and by G. R. Bellinger, Sales Manager of Barringham (Evidence p. 2771). On the other hand the minutes of a meeting of the Rubber Clothing Trade and Tariff Committee of the Rubber Association dated January 29, 1946 suggest that there was at least some competition from certain imported waterproofed fabrics. The meeting recommended that tariff rates which at that time applied only to "rubber clothing and clothing made from waterproofed cotton fabrics", be extended to include "waterproof clothing and clothing made from waterproofed fabrics". "The object of this change is to have waterproof clothing made from unsupported film, or from vinylite coated fabrics, or from waterproofed silk fabrics dutiable under the same tariff item as the rubber clothing and waterproofed cotton clothing with which they compete" (Exhibit 959). The applicable tariff which is listed in the Customs Tariff under Item 619a, as applying to "Rubber clothing and clothing made from waterproofed cotton fabrics", is as follows:

British Preferential	- 22 $\frac{1}{2}$ %
Most Favoured Nation	- 27 $\frac{1}{2}$ %
General Tariff	- 35%

In addition, on each raincoat
under general tariff items - 50¢

During most or all of the period under review, the rates were 25 per cent (B.P.), 30 per cent (M.F.N.) and 35 per cent (G.T.) with the additional duty on raincoats applicable under the most favoured nation as well as the general tariff, and the British preference tariff subject to a 50 per cent reduction from 1941 to 1947.

G. Wartime Controls

Wartime controls affecting the rubber industry are described generally in Chapter 3 of Part I, and it will be sufficient to mention here a number of measures that had particular application to vulcanized rubber clothing.

A formal order was issued in November 1942 which superseded informal instructions; enumerated the lines of protective rubber clothing that could be made; stated their dimensions and the essential occupations for which they could be supplied; provided that, with certain exceptions, such clothing must be made from reclaim or scrap with crude rubber being used only for seams; and laid down the weights of rubber that could be applied to the fabrics. In June 1944 the use of GR-S synthetic was permitted as an alternative to reclaim or scrap rubber. In November 1944 the restrictions upon the occupations for which protective rubber clothing could be supplied were relaxed. In November 1946 the use of 40 per cent of crude rubber was permitted in the manufacture of protective rubber clothing. All restrictions were removed at the end of March 1947. A system of voluntary control was then instituted within the rubber industry for the purpose of saving crude rubber by prescribing the ratio of crude to synthetic to be used in certain articles, but these voluntary controls do not appear to have applied to vulcanized rubber clothing.

When the wartime policy of equitable distribution was revised in September 1945 (see Chapter 3 of Part I) a question arose as to whether the new statement of policy applied to the vulcanized rubber clothing industry. The following extract from the minutes of a meeting of the sales managers of the Companies in the industry held on October 5, 1945 would indicate that they did not consider that the policy then applied to vulcanized rubber clothing:

"EQUITABLE DISTRIBUTION: The secretary drew attention to the recent W.P.T.B. statement of policy with regard to the equitable distribution of goods in short supply, by which manufacturers of waterproof and rubberized clothing are permitted to distribute 20% of their production freely as they see fit. Mr. O'Neill pointed out that this statement of policy does not apply to vulcanized rubber clothing which is not in short supply."

(Exhibit 962)

With the cessation of price controls, vulcanized rubber clothing was officially freed from any restriction that may have been involved in the policy of equitable distribution.

The exact extent to which the vulcanized rubber clothing industry was affected by rubber subsidies is not clear. It will have been noted that, except for small quantities of crude rubber used for seams, and with some other exceptions, only scrap or reclaim rubber could be used during the subsidy period until the middle of 1944 when the use of GR-S synthetic was permitted as an alternative to scrap or reclaim, and that the subsidy ceased in October 1946, before permission was given for the use of an appreciable amount of crude rubber. The following excerpt from the minutes of a meeting, dated October 5, 1945 attended by representatives of Barringham, Canadian General Rubber, Kaufman and Miner, indicates that the industry had not shifted to the use of GR-S synthetic rubber in the manufacture of garments at that date:

"GR-S vs RECLAIM COSTS: As agreed at the last meeting, companies had made a check of GR-S vs Reclaim costs. Barringham, Canadian General and Miner were all in agreement that GR-S costs were considerably higher than had been indicated by Kaufman at the previous meeting.

Kaufman had rechecked their costs and still found that the cost of a 24 gauge GR-S jacket was the same as that for a 26 gauge crude jacket. They gave the following costs for a 26 gauge jacket:

Reclaim	\$1.38
GR-S	1.41
Crude	1.47
Butyl	1.55

In view of the very slight increase in GR-S costs over reclaim, and of the trouble which they are experiencing with the seams of reclaim garments, Mr. Pequegnat indicated that his company (Kaufman) would be prepared to shift to GR-S garments immediately without an increase in selling prices.

The other companies were of the opinion that there were not enough complaints regarding the quality of reclaim garments to justify changing over to synthetic and reducing profit margins at the present time, and it was eventually agreed to make no change for the present. It was further agreed that when the time came to change to synthetic, it would be optional with each company to use GR-S or Butyl (another synthetic) as it saw fit."

(Exhibit 962)

During the period of controls, the Rubber and Price Administrations worked in close cooperation with the Rubber Association and the Companies in the industry were encouraged to deal with these Administrations through the Rubber Association or through the Vulcanized Rubber Clothing Group.

When price controls were lifted in April 1947 the Rubber Controller asked for, and received, assurances that the clothing manufacturers would not increase their prices for at least three months after April 1. The Companies complied with this request.

Chapter 2 - Price Arrangements

A. The Rubber Association and the Vulcanized Rubber Clothing Group

The vulcanized rubber clothing companies were members of the Rubber Association of Canada. Miner joined in 1920, Kaufman in 1935, Barringham in 1942 and Canadian General-Tower or its predecessor, Canadian General Rubber, was a member since 1931. These companies made up the Vulcanized Rubber Clothing Division or Group of the rubber industry. The Group first comprised Miner and Kaufman, then Canadian General Rubber (later Canadian General-Tower) and finally Barringham.

Prior to 1945 there does not appear to have been any direct relationship between the Association and the Group. The leading position in the vulcanized rubber clothing industry was held by Miner and it appears from the evidence that officials of this company played the leading part in the affairs of the Group. Meetings were usually called, and the chairman was usually provided by Miner. T. Y. O'Neill, Sales Manager of Miner from 1926 to 1947, was generally acknowledged as the guiding spirit, and up until the time of his retirement he called the meetings and acted as chairman, and his successor in 1947 as Miner's Sales Manager, W. G. Simpson, carried on in the same way.

Between 1938 and 1945 there was no permanent secretary of the Group and the recording of minutes was carried out by a representative of one of the Companies. In August 1945 the affairs of the Association and the Group drew closer together when G. B. Smith, the Secretary and Manager of the Association, assumed the functions of secretary of the Group. His duties included attendances at meetings, recording of minutes, preparation of jobbers' lists and, generally, acting as a liaison officer among the members of the Group. In all, ten sets of minutes of Group meetings were obtained by the Commission beginning August 10, 1945 and ending May 9, 1947. These minutes set out certain decisions taken by the Group on the various matters discussed at the meetings. Many of these matters are directly related to wartime controls. Copies of the minutes were distributed by the secretary to the members.

The matters which were discussed, and upon which agreements were arrived at, by the Companies, included prices, jobbers' lists, discounts and other terms of sale, transportation allowances and tenders. In many instances these agreements are to be inferred from references to joint action contained in correspondence passing between the Companies or between officials or employees of the same company.

B. Exhibit 197

Exhibit 197 is a document dated August 18, 1944 obtained from the files of Kaufman. It sets out, first, a group of the leading articles of rubber clothing identified by Miner numbers and names and showing east and British Columbia list prices. Then follow terms of sale relating to payment dates, discounts and f.o.b. conditions. Next comes a list of prepay and stock-carrying points and a provision about equalization of freight charges.

There is a paragraph relating to jobbers which provides that any new jobber whose name is proposed for inclusion in the vulcanized rubber clothing Jobbers' List must comply with certain qualifications, and the inclusion must be consented to by all Companies (see p. 624).

A paragraph about seconds provides:

"SECONDS.

The discount on Seconds shall be 10%."

A paragraph about discounts within the Group states:

"DISCOUNT ON SALES WITHIN GROUP.

On purchases made from another manufacturer within group, (*italics supplied*) the discount is 15%."

Then follows a paragraph showing the charges to be made on "standard extras" such as over-sizes, special features and alterations on garments. A paragraph dealing with range states:

"ADDITIONS TO RANGE.

It is understood that before adding a new garment or article not previously in the range, samples are to be sent with application for the consent of other manufacturers to its inclusion, (*italics supplied*) also that if a change in a garment or article adds to the cost of manufacture, it is to be submitted to other manufacturers for approval."

There is a provision relating to "job lines":

"JOB LINES.

Any lines to be sold at lower prices than 10% off list to the retailers, or 15 and 10% to jobbers, are to be cleared with all companies to avoid misunderstanding." (*italics supplied*).

There is also a paragraph relating to the Magdalen Islands:

"MAGADIENE (sic) ISLANDS. Shipments for Magdalene Islands - 10%,
Terms on placing deliveries - Dec., Jan., Feb., Mar., 2% Apl. 10th,
Net Apl. 30th. Regular terms on sorting."

The foregoing does not exhaust but gives the main items on the document.

The evidence of C. D. Pequegnat concerning this document was in part as follows:

"Q. Here is a document dated the 18th of August, 1944, Exhibit 197. I show it to you. Purportedly, that document or rather the document of which that is a photostatic copy --

A. Yes, that is the range of permitted lines we were able to make during the war. Those are the stock-carrying points, the basis for sale, standardization of charges.

Q. Could you tell me who prepared that or do you know? I do not see anything on it?

A. This is out of our files, isn't it?

MR. DAVIDSON: Yes, it is.

THE WITNESS: This could have been compiled off our own records."

(Evidence pp.582-3)

"Q. This Exhibit No. 197, which you have already seen, states, at page 2 --

New jobbers: It is understood that any new jobber whose name is proposed for the clothing jobbers' list must, in addition to being eligible as a legitimate jobber, and consented to by all companies, give a firm order for immediate delivery for rubber clothing valued at \$300 if in Quebec, Ontario or provinces west thereof, or \$500 if in New Brunswick, Nova Scotia or Prince Edward Island. A clothing jobber must be prepared to stock rubber clothing for distribution from his place of business and have representatives on the road soliciting orders. In other words, his qualifications must be those of a wholesaler.

Does that set out the circumstances accurately?

A. That is the basis for qualifying.

Q. The basis for qualifying?

A. Yes.

BY THE DEPUTY COMMISSIONER:

Q. Before we leave that, I should like to direct your attention to the expression 'and consented to by all companies'; it was suggested no name could be put on the jobbers' list unless all companies agreed to it.

A. A name was proposed for this reason, that in the past some dealers got on the jobbers' list and got jobbers' discounts, when they did not qualify. It gave companies the privilege of investigating to see whether these proposed names qualified or not.

Q. And, according to this minute, that has to be consented to by all companies?

A. Yes.

Q. In that respect does it differ from the footwear situation?

A. Yes, we can appoint a legitimate jobber.

BY MR. MARTIN:

Q. One other thing in the last document, Exhibit 197; what was the distinction which is pointed out here? I see that there must be a firm order for \$300 in Ontario and Quebec, and \$500 in the maritime provinces.

A. That was there when I went there. I cannot tell you what it was for."

(Evidence pp.597-8)

Mr. Pequegnat became Sales Manager of Kaufman in 1938 having been with the company before that since about 1914 or 1915.

T. Y. O'Neill of Miner stated in part:

"Q. Do the contents of that convey anything to you, Mr. O'Neill?

A. Well, it looks like a description of the terms on which we were selling, and the conditions.

Q. It sets out your prices?

A. Yes, and I think bears out the fact that we pretty well controlled the situation by issuing our own lists.

. . .

Q. I notice in that document there is a reference made to other companies?

A. Yes. I have explained, of course, we did meet occasionally and exchanged information; that would include the other companies. We would tell them what we were doing and so on.

Q. That was done, I take it, by your company even during the period of controls?

A. Yes, so far as we could.

Q. The prices were all fixed by the Wartime Prices and Trade Board?

A. Yes.

Q. That is, the maximum prices were?

A. Yes, that is right. These standard extras, for instance, on page 3, those were the same. It is just a reiteration of what we had been charging. This is a list really of our whole plan."

(Evidence pp. 1206-07)

"Q. Could you tell me about any additions or deletions to the list? I mean was it done by your company alone or did you do it in consultation with the other companies or how was it done?

A. Well, we had certain qualifications which we had --

Q. For a jobber?

A. Yes.

BY MR. O'DONNELL:

Q. That is the Miner Company?

A. Yes, Miner had, and the other companies had been told of that and were following the same line.

BY MR. MARTIN:

Q. Those are the qualifications you referred to which are set out in that last document, Exhibit 197, that he had to have a firm order of \$300 and \$500 in the maritimes?

A. Yes, and he had to have a representative on the road. In other words, he must be a qualified jobber doing a bona fide jobber business in order to do a job for us. That is what we give him a jobber's discount for."

(Evidence pp. 1209-10)

- "Q. Yes. I refer you again to Exhibit No. 197. There is a paragraph in the middle of page 3 which refers to additions to the range. Would you take a look at that? It was referred to just a few moments ago. Does that paragraph on page 3 which refers to additions to the range, state correctly the situation?
- A. Yes, that was continuing the interchange of information in connection with different new lines.
- Q. And does that paragraph correctly set out the situation as it existed before controls, as you recall -- before November 1, 1941?
- A. I don't recall that we had any such arrangement as that.
- Q. Was there any arrangement before controls about additions to the range?
- A. As the leading company, we did send out information regarding what we were doing in connection with adding to or changing lines. We got the same information from other companies. They advised us at the same time what prices they were charging."

(Evidence p. 1223)

- "Q. There is only one thing in here which I should like you to clarify, Mr. O'Neill, and that is with reference to this paragraph on page 3 of Exhibit 197, headed 'additions to the range.' The latter part of it reads,

Also, if a change in a garment or article adds to the cost of the manufacture, it is to be submitted to other manufacturers for approval.

Was that correct?

- A. That was a very polite way of putting it.

BY THE DEPUTY COMMISSIONER:

- Q. What do you mean by that, sir?
- A. Well, I mean we exchanged information but if it was not approved they went their own way and did it, as we would.
- Q. What was the purpose in exchanging this information?
- A. Just to make our jobs easier, I guess. I mean, the sales managers.
- Q. You mean in keeping track of what the other fellow was selling?
- A. Well, it saved us picking up garments and guessing at what the price was and so on. We could have gotten all that

information. It would have been perhaps a little longer and perhaps a little more difficult to get it, but we always got it.

BY MR. O'DONNELL:

Q. During this period each company determined what line or lines it would produce?

A. Yes.

Q. And at what price it would sell them?

A. Yes."

(Evidence pp.1225-26)

W. G. Simpson of Miner stated:

"Q. You did not know anything about an understanding or agreement that a jobber had to give a firm order for \$300 and had to have salesmen on the road and be doing a regular job of jobbing before he was allowed --

. . .

Q. Was there any understanding or agreement between your company and other companies in the industry that those were the qualifications that were required before a jobber could be added to the list?

A. That would come up before my time.

Q. But after, since you --

A. I just carried along in the same way.

BY MR. O'DONNELL:

Q. You mean it would have come up before your time, if it came up at all?

A. Yes, I mean that -- if there was any agreement.

BY MR. MARTIN:

Q. But I am asking you whether you, of your own knowledge, knew of any such agreement in the industry?

A. Yes, I did.

Q. You did?

A. Yes."

(Evidence pp.1376,77)

Witnesses from Canadian General-Tower were also asked about Exhibit 197. Their evidence was to the effect that it was not the record of a common policy agreed upon among the Companies. From time to time in the succeeding paragraphs however, reference will be made to agreements or common measures that follow the pattern of this document. This is a convenient place to refer to two such instances.

On May 12, 1947 C. D. Pequegnat of Kaufman wrote to Miner, Barringham and Canadian General-Tower as follows:

"We would like to table the sale of 300 assorted defective vulcanized rubber garments, at a discount in excess of 10%. These garments have been repaired by patching and were not saleable at the 10% S.D. discount."

(Exhibit 216A)

J. W. Bryant of Canadian General-Tower replied on May 16, 1947 as follows:

"We have no objection to a further discount in a case of this kind, as the regular 10% is not interesting enough for really defective garments."

(Exhibit 216B)

Sometime in 1946 Canadian General Rubber allowed a discount of 15 per cent on an account in the Magdalens and was checked up by Miner for doing so. On April 15, 1946 W. G. Simpson of Miner wrote to A. J. Graham of Canadian General Rubber:

"We have a report that your companies (Canadian General Rubber and Towers Canadian) are allowing Wm. Sumarah of the Magdalene Islands, 15% discount on protective rubber clothing.

We would appreciate it very much if you would let us know if, through an error, the full jobbers' discount of 15% is being allowed this account in place of the 10% which applies on shipments for the Magdalene Islands."

(Exhibit 235A)

This letter was replied to on April 18 by J. W. Bryant of Canadian General Rubber, who admitted that their company had allowed a 15 per cent discount and stated that he could not say how this came about and that he could advise their salesmen of the proper discount (Exhibit 235B). Then in a memorandum dated April 18, 1946 to a salesman of their company, Mr. Bryant wrote:

"We have just been checked up by the Miner Rubber Company Limited, for allowing Wm. Sumarah & Sons of Magdalen Islands 15% discount, instead of the 10% which applies on shipments to Magdalen Islands.

Please do not offer the 15% discount in future, as they are definitely not on the jobbers' list and do not know how it came about they received the 15% discount."

(Exhibit 235C)

T. Y. O'Neill of Miner acknowledged Mr. Bryant's reply on April 22, 1946:

"Referring to your letter of the 18th instant, No. 2112.

15% Discount on Clothing to the Magdalen Islands. It is too bad that this error occurred, for it has caused us a little trouble, however, we are quite ready to believe that you have taken the necessary steps to avoid a recurrence.

No doubt you are aware that there is nobody on the Magdalen Islands, whose name is on the Clothing Jobbers' List, therefore nobody on the Islands is entitled to a full discount of 15%."

(Exhibit 229)

C. List Prices

Between 1938 and 1945 there is very little documentary evidence of activities by the Vulcanized Rubber Clothing Group with regard to uniform list prices. The evidence at the hearings established that meetings of the Group were held during that period, that prices were discussed at these meetings, and that price lists were exchanged by the members.

The oral evidence, and the documentary evidence and price lists relating to the latter part of the period, indicate that the list prices of the vulcanized rubber clothing manufacturers were substantially identical for the important standard items from 1938 to 1948, with the exception of Barringham whose prices did not become identical until 1945.

Ceiling prices were established in December 1941. At that time three companies were members of the Vulcanized Rubber Clothing Group: Miner, Kaufman and Canadian General Rubber. The evidence of C.D. Pequegnat, General Sales Manager of Kaufman, shows that at the time controls were imposed prices were uniform:

"Q. I assume during the course of that time the prices for the goods were the same for similar articles?

A. That is right.

Q. During the control period?

A. Yes.

BY THE DEPUTY COMMISSIONER:

Q. Why were they the same, because they were the same during the basic period?

A. Yes, the list prices were used by the three⁽¹⁾ companies.

(1) Tower Canadian Limited was not a member of the Rubber Association and was represented at meetings of the Group by the representatives of Canadian General Rubber.

Q. Therefore, all were frozen at the same level when the ceiling was imposed?

A. Yes."

(Evidence pp. 583,84)

Again, in commenting on a letter of August 29, 1946 (Exhibit 209a) from Mr. Simpson of Miner, addressed to Mr. Pequegnat of Kaufman, relating to an application to the Wartime Prices and Trade Board for increased prices on garments not manufactured since controls were imposed, the latter said in evidence:

"Q. If there was not going to be a joint application, why would they (Miner) be communicating with you and the others?

A. We had made it before the war, before the freeze, and there was a list price which was used by all companies, and I think Miner here are asking --

Q. A list price used by all companies? When?

A. Before the freeze, and it is the same list. They just asked us whether that list price they were proposing is in keeping with our costs, whether we would accept it."

(Evidence p. 589)

Mr. Pequegnat stated in evidence that between 1938 and 1941 and from April 1947 to the time of the hearing, Kaufman "adopted" Miner's prices (Evidence pp. 616, 617).

The evidence of H. S. Ireland, Secretary of Canadian General Rubber from 1935 to 1940, and General Manager of that company and Canadian General-Tower from 1940 to 1947, indicates that their prices during the period from 1938 to 1941 were the same as those of Miner:

"Q. Do I understand you correctly to say - and we will take it from 1938 to 1941 - that from 1938 to 1941 so far as prices were concerned they were chiefly determined by the Miner Rubber Company?

A. Yes."

(Evidence p. 2051)

"Q. I am rather interested in this question, before 1941, how were your prices fixed? You told me Miner was the leader and they determined the prices, how was that done?

A. Any time we asked, they would send us a price list."

(Evidence p. 2062)

The minutes of the meeting of January 11, 1946 indicate price understanding in the fall of 1941:

" . . .

BASIC PERIOD PRICE OF BOYS' FRONTENAC COAT: The basic period price lists of Miner and Kaufman are not in agreement on the price for this garment, one showing \$3.60 and the other \$3.95. Canadian General Rubber are to check their price list to see if they had a basic period price for this garment while Miner and Kaufman will check into the minutes of meetings held around September 1941 to try to find out which price is correct.

. . . "

(Exhibit 960)

Before 1945 Barringham was not a member of the Group, although from 1942 on it was a member of the Association. Until 1945 its products were sold chiefly to one company, the Croydon Manufacturing Company of Montreal, which distributed them. During that period, Barringham's sales to Croydon amounted to an average of less than 5 per cent of the total sales of all the Companies. The garments were sold to Croydon in an unfinished condition, and were finished by that company,

In 1945 representatives of Barringham began to attend meetings of the Group. About the same time the company printed a price list, and the prices quoted were the same as those of the other companies in the industry for comparable garments. They also adopted the system of quoting list prices less discounts instead of their previous method of quoting net prices in their sales to Croydon.

Documents from the files of Barringham show that one result of becoming an active member of the Group was to have prices the same as those of the other companies. In a letter dated May 12, 1945 to a sales firm which operated a branch in Toronto, G. R. Bellinger, General Sales Manager of Barringham, wrote:

" . . .

We would like, very much, to sell our clothing to your Toronto Branch, as we know that your Company is surely a wide-awake outfit.

This account is very easy to sell, as no doubt you know, without me telling you, and for your information, the Rubber Association found out, that we were certainly operating a particularly nice business in this line and have closed in on us to a certain extent, by asking us to meet and join the Association with them. This we have done.

. . .

Kindly keep in touch with us again, if you are further interested, and we will gladly supply you with any of the catalogues,

that we are having printed, and prices, showing the discounts the same as the Association prices. . . ."

(Exhibit 710)

In a letter dated May 28, 1945 to their Montreal representative, Mr. Bellinger wrote:

" . . . These [the prices previously set out in the letter] are the standard prices and, as Maco, or your friend Provincial Importing Company, Ltd., are not on the Jobber's List, we are asked by the Association to quote these prices to all our accounts.

. . .

We have had quite a time getting printing done and folders are not here as to the above date. When we get new folders, we will send them to you to pass around to your trade and they are exactly the same prices as Miner, or Canadian, C.G.R. and Kaufman.

. . .

. . . "

(Exhibit 709)

Mr. Bellinger's evidence with regard to this letter was to the effect that the price fixing was done under the provisions of price control regulations:

"Q. . . . Was there any agreement among the four manufacturers of rubber and vulcanized clothing in Canada at that time with respect to prices?

A. Yes, there was, through the W.P.T.B. rules and regulations.

Q. I understand that; in other words, there was a ceiling imposed by the Wartime Prices and Trade Board?

A. Yes.

Q. Which set the maximum prices at which various articles of rubber vulcanized clothing could be sold?

A. Yes.

Q. But there was nothing to prevent a company selling underneath those prices?

A. No, nothing at all."

(Evidence pp.2695,96)

In a letter dated June 12, 1945 to a Vancouver agency Mr. Bellinger wrote:

" . . .

We are having some new British Columbia prices on vulcanized clothing printed and upon receipt of these from our printer, we will again send you a new set-up, as we have been asked by the Rubber Association, in the vulcanized clothing field, to join and have the same prices as all the other manufacturers of that particular type of business.

. . ."

(Exhibit 716)

In a memorandum to a company salesman in Toronto dated July 4, 1945 Mr. Bellinger wrote:

"Enclosed is a sample Price List #45 for Baruco Waterproof Clothing, which is the new set-up of the Rubber Association prices . . . We are now in with the rest of the rubber boys on this business and every one price is the same. There won't be any talk about Barringham selling goods cheaper than anyone else. What we will have to find out and watch is whether they are chiselling here or there. . . ."

(Exhibit 719)

On July 4, 1945 Mr. Bellinger sent copies of the new Barringham price list to the sales managers of Miner, Kaufman and Canadian General Rubber with the following covering letter:

"We take pleasure in sending you our Baruco Waterproof Clothing Price List #45, both Eastern Price List and British Columbia Price List.

We trust you will find this in keeping with the understanding of the meeting held in Montreal, Friday, May 4th, 1945."

(Exhibits 208,720,721)

There is no record of the understanding of the meeting of May 4; but a comparison of the prices quoted in Exhibit 738, which is the Baruco Price List #45, with those of the other companies in the Group bears out the statements made by Mr. Bellinger in Exhibits 716 and 719.

In a letter to distributors in Winnipeg dated July 23, 1945 Mr. Bellinger wrote (referring to Price List #45, i.e. Exhibit 738):

" . . .

These Eastern and Western Lists are the newest printed prices from the Rubber Association . . .

. . .

If I have not made this clear enough, do not hesitate to ask any questions and we will do our best to give you the latest information from the records of the Association.

..."

(Exhibit 726)

He explained this quotation in evidence as follows:

"Q. Then, you say you have printed prices from the Rubber Association; could you explain that?

A. Well, the new printed prices from the Rubber Association would be the prices that we had obtained through competition.

THE DEPUTY COMMISSIONER: From the other rubber clothing companies?

THE WITNESS: Yes.

BY MR. DALY:

Q. The Association, itself, had no prices, did it?

A. The Association had no prices at all. It was the manufacturers' prices, regardless of whether we got them from the retail store or the jobber, or anywhere. We could get them anywhere, not only through the Association, but outside if necessary."

(Evidence p. 2732)

It appears from the oral evidence that the price lists above referred to by Mr. Bellinger were in error in stating the sales tax to be extra, and corrected lists showing sales tax included like the other companies were issued immediately this error was detected. The Barringham list also contained another error: one garment had a price which was less than that of the other companies for their similar products. Mr. Bellinger, in a letter to a Halifax jobber dated December 21, 1945 explained how this matter was corrected at a meeting of the Group:

"..."

Re your letter of December 18th, with the enclosed price list of vulcanized clothing, the reason for the change in price is, that when we printed these folders, our General Coat marked on the first price list \$4.65 did not tally with the Miner Rubber Company. They have a coat in their range at \$4.65, which we thought was the same as our regular General Coat and at a meeting, pointed out that we had made an error and were asked to make new price lists, having our coat match up with all the other rubber companies at \$4.90, which we did. Hoping this clears the situation, as it was not a case of raising the price of our coat from \$4.65 to \$4.90, but just a case of having our range match competitive lines.

..."

(Exhibit 733)

This letter appears to explain a terse entry in the minutes of a meeting, dated August 10, 1945 which merely said:

"BARRINGHAM GENERAL PURPOSE COAT: Mr. Bellinger reported that this situation had been cleared up."

(Exhibit 963)

An excerpt from a letter, dated May 21, 1946 written by J. W. Bryant of the Sales Department of Canadian General Rubber to an agent in Alberta indicates that uniform prices were the result of agreement in the industry:

"The Jobbers' List set-up on the Rubber Clothing is simply this. The Vulcanized Rubber Clothing Manufacturers, that is Miners, Kaufmans, Barringham, C.G.R. and Tower have an Association which has nothing to do with any other rubber products whatsoever, with identical prices on identical garments and a Jobber's List known to all . . ."

(Exhibit 218c)

A question was raised at the hearings as to whether Mr. Bryant was authorized to write such a letter. However, his experience in the business and the nature of the duties that he appears to have been, in fact, performing seem undoubtedly to qualify him to describe the practices that were followed.

The evidence of A. J. Graham, of Canadian General-Tower on this excerpt is as follows:

"Q. 'An association which has nothing to do with any other association' they have identical prices on identical garments. Is that correct?

A. I do not think it is.

Q. At that time?

A. I do not think that is correct. The garments are not identical.

Q. With identical prices on identical garments; the garments are not identical, but are the prices identical on similar garments?

A. In so far as it is possible the prices are identical on similar products.

Q. Is that true today? (October 1948)

A. Yes.

Q. Well now, how did that come about? This question of identical prices on similar garments, how did that come into effect; was it by arrangement or agreement or how?

A. I can only answer that by saying we recognized Miner as the producer and we have to sell at identical prices or go out of business."

(Evidence pp.689,90)

Since controls ended in April 1947 the three companies which were still manufacturing vulcanized rubber clothing (Barringham ceased manufacturing in the latter part of 1946) continued to maintain prices that were uniform. According to the evidence given at the hearing, Kaufman and Canadian General-Tower adopted the prices set up by Miner. Following is the evidence of C. D. Pequegnat of Kaufman on this point:

"Q. . . . Has there been, from 1938 to 1941, prior to control, or from April, 1947, to the present time, any arrangement or agreement or understanding with respect to the prices of your product, with other companies?

A. I would say no. We recognized and respected the prices of the Miner Rubber Company, who are the major producers.

Q. Did the other companies do the same thing? In other words, so far as your company is concerned, you say you adopted --

THE DEPUTY COMMISSIONER: No.

BY MR. MARTIN:

Q. 'Respected' - do you mean you adopted Miner's price?

A. Yes, we adopted Miner's price.

Q. You did?

A. Yes.

Q. And did the other companies do the same thing, so far as you know?

A. Yes, so far as I know, adopted the list price. I do not know anything beyond that."

(Evidence pp.616,17)

The evidence of H. S. Ireland, who was with Canadian General-Tower, confirms this:

"Q. Do you recall attending any meetings of the rubber clothing group from April 1, 1947, to the end of the year?

A. No, I do not.

Q. How were your prices determined that year?

A. The same way.

Q. That is, following Miner?

A. Following Miner, yes."

(Evidence p. 2075)

A. J. Graham of Canadian General-Tower stated:

"Q. Now then, since the lifting of controls on April 1, 1947, at any of the meetings you have attended has there been any discussion with respect to prices in any of those meetings?

A. When controls went off the rubber industry as a whole was asked to try to keep the prices of our finished products down as much as possible, and I think that is what is fairly general with the trade. That came on the recommendation of the rubber controller. We have not as an industry increased prices in proportion to our increased labour or labour costs or our increased cotton costs.

BY MR. SEDGEWICK:

Q. You say that you discussed prices after April 1, 1947, in an effort through industry-wide co-operation to carry out the rubber controller's suggestion?

A. That is definitely correct."

(Evidence p. 650)

On April 2, 1947 G. B. Smith had written to Barringham and Kaufman as follows:

"RE: PRICE DECONTROL OF RUBBER CLOTHING

With reference to the announcement in this morning's paper that price ceilings have been suspended from a large additional list of products, including amongst others rubber clothing, I have to inform you that Mr. J.A. Martin advised the Directors of the Rubber Association that this step was contemplated, at a meeting held on March 31st.

At the time, Mr. Martin stated that decontrol of rubber clothing prices would be conditional upon assurances being given by the industry that prices of rubber clothing would not be increased for a period of at least three months from April 1st. Messrs. H.S. Ireland of Canadian General - Tower Limited and W.H. Miner of the Miner Rubber Company who were present at the meeting gave Mr. Martin such an assurance, insofar as their companies were concerned, and Mr. Martin asked me to write to you for similar assurances from your company.

Would you, therefore, be good enough to write to me at your earliest convenience signifying concurrence in the assurance that rubber clothing prices will not be increased for three months from April 1st."

(Exhibit 986)

In the spring of 1947, following an upward adjustment of ceiling prices by the Wartime Prices and Trade Board, Miner, Kaufman and Canadian General-Tower issued new price lists containing identical prices for most of the important standard garments. Barringham had by this time ceased to manufacture vulcanized rubber clothing and was engaged in disposing of its inventories and did not publish a price list.

A copy of a letter apparently written by the Manager of St. Lawrence Rubber Co. Ltd. to the President and Treasurer of American Wringer Co. Inc., Woonsocket, R.I., on September 20, 1947 was taken from the

files of the first-mentioned company. The St. Lawrence company was expecting to go into the production of vulcanized rubber clothing, a project which it did not carry through.

"We got our samples of Workmen's Clothing completed, and Mr. Bergeron, General Manager, Mechanical Sales, Dominion Rubber Company, Mr. McGiverin and Mr. McKenzie, his assistants, came to Farnham to see them. They were extremely well satisfied with our first attempt, and gave us to understand that they could get a very substantial business for us. Mr. McGiverin is to have a survey made through their Sales Department to determine the best selling lines and the quantities which would be required.

I was in Toronto Thursday at an Association meeting, and mentioned that it was our plan to go into the manufacture of this line, and that we would be willing to abide by the prices and regulations. The other companies manufacturing Workmen's Clothing are as follows:

Miner Rubber Co., Granby, Que.
Koffman Rubber Co., Kitchener, Ont.
Canadian General-Tower Co., Galt, Ont.
Barringham Rubber Co., Oakville, Ont.

They are to send me the sizes in gauge, specifications and prices."

(Exhibit 629)

The Manager of the St. Lawrence company, Mr. Worden, explained in evidence that what was referred to as a meeting was an appointment with A. J. Graham of Canadian General-Tower at the Association offices, where he mentioned that the St. Lawrence company was going into the vulcanized rubber clothing line; that by being "willing to abide by their prices and regulations" he meant that the St. Lawrence company would follow the prices and specifications of the people who were already in the business until it found out what its costs were, whereupon it would decide what to do; and that it was the Dominion Rubber Company, for whom the St. Lawrence company expected to manufacture, and not the four companies mentioned in the Exhibit, which was to send the St. Lawrence company "the sizes in gauge; specifications and prices".

The following unsigned paper was taken from the files of Barringham:

"September 22nd, 1947

Mr. McCoy - Copy to Mr. E. Barringham
G. Bellinger

This is to advise you that we are going to have an additional clothing manufacturer in the group. Mr. Wharton of St. Lawrence Rubber Company informed me at the meeting yesterday that they have now made samples of all the line of Protective Rubber Clothing and want to pass them with the different manufacturers and join the group of Vulcanized Clothing Makers."

(Exhibit 734)

In January 1948 Miner, Kaufman and Canadian General-Tower issued new price lists which contain identical prices for most of the important standard garments.

D. Discounts and Terms

(a) Discounts

The discount structure in the vulcanized rubber clothing industry is simple. All prices are quoted as list prices to retailers and prices to such people as wholesalers, agents, etc. take the form of discounts from list.

The main discount is the Jobbers' Discount, which is 15 per cent off list and is allowed by each member of the Group to those firms whose names are on the industry Jobbers' List. This discount was apparently established by Miner long before 1938 and has been adopted by each company as it joined the Group. There is also a cash discount of 2 per cent, a discount on seconds of 10 per cent, on sales within the Group of 15 per cent, and a discount for agents selling to jobbers of 10 per cent. All these discounts except the last one are set out in Exhibit 197. It would appear from the correspondence quoted on page 607 that the discount on seconds is flexible.

On June 10, 1944 T. Y. O'Neill of Miner wrote to C. D. Pequegnat of Kaufman (Exhibit 403D) to tell him it had been reported that H. A. Borgerson Ltd. of Vancouver was receiving a 10 per cent discount from Kaufman: " . . . They are not on the Jobbers List, and of course we have no 10% class which would warrant the extension of this discount. . . . If it is thought that a discount should be given to this concern, then they should be on the Jobbers List. Please advise. . . ." Mr. Pequegnat replied that Kaufman had not sold this account since 1940, " . . . so I guess we are not guilty. Will check when in Vancouver and let you know whether we think they should be put on the jobbers list." (Exhibit 403D) Mr. O'Neill at the same time had written to H. S. Ireland of Canadian General Rubber about the matter, and Mr. Ireland replied on June 15, 1944 (Exhibit 403B) that " . . . we have sold them a small amount of Rubber Clothing at list price. . . ." He went on to say that in view of Canadian General Rubber selling the account at list price, it was rather improbable that Kaufman had been extending any special discount but that " . . . the matter should be taken up with Mr. Pequegnat as well as ourselves. . . ."

Referring to this incident, H. S. Ireland said:

"Q. . . . At this time, in the event of a company committing an alleged infraction, was it the practice that the others should be circulated to find out who has been guilty of it?

A It is not a matter of an infraction other than a discrepancy from a previously disclosed jobbers' list. This Borgerson was not on our jobbers' list, that is, the jobbers' list which we had

given to the Miner Company as our current and up-to-date list of jobbers did not include Borgerson. However, in Mr. O'Neill's opinion we were supplying Borgerson at a jobber's price. He was ready to ask us if -- have you got these people on your list, and I wrote back and told him, no, we have only sold at list prices. If somebody else was giving him a discount, we would not get it at list.

Q. Was there any agreement between your company and Kaufman, Miner's and the others that you would follow list prices with reference to people who were not on the jobbers' list?

A. No.

Q. Was there any agreement you would give a jobber's discount only to persons on the list to whom you have referred, that is, the jobbers?

A. Only on our own say-so. As gentlemen, we told them we had given each other a list of these people who were on the jobber's list, but there was no agreement, we could do what we liked. We could add to it or delete from the jobbers' list without telling them, but it was just not common courtesy to do so without telling them.

Q. There seem to have been a number of instances here where someone would seem to be annoyed or feel he was being slighted in some way when there were departures of this sort?

A. It could be so interpreted from the wording of the letter, but that was not the case."

(Evidence pp.2068,69)

The discount to agents is noted in the minutes of a meeting of the Group dated November 9, 1945:

". . .

BRANCHES AND AGENTS:

Mr. O'Neill explained that any company in the group is permitted to appoint agents to act in lieu of branches, selling to jobbers only. On sales to jobbers from their own stocks, these agents are allowed 10%."

(Exhibit 961)

Exhibit 197 contains the following two paragraphs in elaboration of discounts:

"BRANCHES.

It is understood that when a discount is authorized to a firm with branches, the same discount shall apply to the branches as well as to the parent house.

B.C. DEPT. STORES.

On direct shipments to the Dept. Stores in B.C. included on Jobbers List, viz., Woodward's, Spencers and Hudson Bay, a discount of 15% may be allowed, and freight may be prepaid, but on sorting shipments from Vancouver stocks a discount of 10% only may be given."

(Exhibit 197)

The evidence of T. Y. O'Neill, formerly of Miner, in respect of discounts was as follows:

- "Q. Could you tell me, before controls were imposed in November 1941, was there any agreement between the four companies manufacturing rubber clothing with respect to discounts?
- A. I just want to reiterate, Mr. Martin, that we called the tune pretty much and we had submitted our list of jobbers. Those were added to on suggestion, occasionally, but on the other hand if we wanted to add a jobber we used to do it and advise the other companies.
- Q. Could you tell me this, did the other companies follow your merchandising plan so far as prices and discounts were concerned?
- A. We had the same list prices, yes.
- Q. So they did follow you, you say?
- A. Yes, they did, not in every case, but they did in a general way. I think they would have to, on account of the fact we were making the best known and best established line of clothing on the market.

BY THE DEPUTY COMMISSIONER:

- Q. Was there any agreement on their part that they would follow your lead with reference to discounts, to jobbers' lists and so on?
- A. It was understood they would, yes, but they did not always do it, of course."

(Evidence pp. 1204, 05)

During price controls the Companies were not permitted to lower their discounts, although there were no Government regulations to prevent them from giving new or bigger discounts if they wished. (Establishing of ceiling prices involved fixing maximum list prices, minimum discounts.) The members of the Group maintained their common discount structure. In a letter, dated May 15, 1944 to an agent in Toronto refusing a request by the agent to extend a 15 per cent discount to a firm of dealers on the ground that they were receiving a bigger discount from an independent manufacturer, T. Y. O'Neill, at that time Sales Manager of Miner, wrote:

". . .

We were under the impression that the National Tent & Awning Company were out of business, as we haven't heard from them as competitors for so long. Are you sure that they are still manufacturing utility waterproof rubber garments and are selling to the trade? They have never been included in the group and are therefore free to offer discounts wherever they may choose to do this. The Canadian General, Tower Canadian, Kaufman and we are in the group."

(Exhibit 414F)

According to Exhibit 197 the discount for shipments to the Magdalen Islands was 10 per cent. The Sumarah incident where Miner checked Canadian General Rubber for allowing a larger discount has been referred to at page 607.

The evidence of G. B. Smith, Secretary and Manager of the Association, discloses that since controls were lifted there has been agreement in the industry with relation to discounts:

"Q. Can you tell me since decontrol - since controls came off - if there have been any agreements entered into by any of the members of the footwear division with respect to these other matters, such as classification of customers and discounts?

A. So-called agreements, yes.

Q. What do you mean by 'so-called agreements'?

A. Well, I mean that we may write down in the minutes that 'it was agreed to do so and so'; but I have no means of ascertaining whether those agreements are observed.

". . .

Q. Since the period of decontrol have you had any complaints of companies which have not observed anything in the nature of an agreement on, for instance, the classification of customers and discounts?

A. Yes.

Q. Yes; that is, you have had complaints from some of the member companies that some company or companies were not observing, probably, the list, or giving customers on the list discounts to which they were not entitled?

A. That is so, yes.

". . .

BY THE DEPUTY COMMISSIONER:

- Q. The description you gave of the activity of the footwear division would, I gather from what you say, apply equally to each of the other divisions?
- A. Generally, yes.
- Q. I would appreciate it if you would take them one by one and point out any material variations or differences. For instance, what about clothing?
- A. Well, of course each branch of the industry has its own methods of distribution. And naturally, therefore, there are some differences between the methods of operation of the various groups. But without actually sitting down and --
- Q. I do not want to be unfair by asking too general or sweeping a question.
- A. Generally speaking, I think it is true that they all operate along much the same lines, and discuss much the same sort of problems.

. . .

BY MR. MARTIN:

- Q. You are not able to say whether any agreement on classification of customers and discounts - you do not know whether the agreement was effective or not?
- A. We have no means of enforcing any of these so-called agreements, no means of policing them, no sanctions of any kind that could be imposed if they are not observed.
- Q. You have received complaints, you say, that certain companies were not observing them?
- A. Quite.
- Q. In the event of complaints, how did you deal with them?
- A. The next time a meeting of the particular group happened, the subject of that complaint will be tabled and discussed."

(Evidence pp. 95-106)

The main discount was the Jobbers' Discount and this is the discount with which the Group was mostly concerned. It was confined to those firms which could get their names on the Jobbers' List, and this involved common recognition by the members of the Group. The Jobbers' Discount, as already noted, was 15 per cent, so that, with the few exceptions previously

oted, there were in effect only two sets of prices in the vulcanized rubber clothing trade, viz: the list price to retailers which was substantially uniform throughout the industry, and the list price less 15 per cent to those on the Jobbers' List, which was also substantially uniform throughout the industry. The Jobbers' Discount itself appears always to have been accepted in the trade and there are no notable occasions of any variations from it. Difficulties which arose concerned not the size of the discount, but rather to whom it should be given. Once it was agreed that an applicant firm possessed what the Group considered the necessary qualifications to be dealt with as a jobber, then that firm received a discount of 15 per cent, no more, no less. There were no special discounts for volume purchases either amongst jobbers or retailers although some large department stores were put on the Jobbers' List. The matter of the Jobbers' List will be discussed in the next section.

(b) Terms

Terms of payment were substantially the same throughout the industry. The terms "2% 10th - or Net 30th of month following shipment" were used by Miner, Canadian General-Tower and Barringham (Exhibits 244, 444, 738). Kaufman, since 1947 at least, have used the terms: "2% 7th - Net 27th of month following shipment" (Exhibit 143), which amounts to much the same as the others. Sales tax was included in the list prices.

These terms (2% 10th or Net 30th of month following) were set out in Exhibit 197. That they were the subject of understanding is supported by a letter dated July 30, 1945 written by G. R. Bellinger of Barringham to T. Y. O'Neill of Miner checking the proper terms to be quoted. Mr. Bellinger wrote:

" . . .

I would like to check the terms, as we have marked ours 'Sales Tax Extra, plus 2% or net 30th of month following shipment.' According to our Western Distributor in Winnipeg, he states that C.G.R. quote a net dealer list, sales tax included. I wanted to be clear on this and pass the information on to you."

(Exhibit 727)

There is no record of Mr. O'Neill's reply to this letter, but it is known that the terms quoted above were never used and the price list which was issued about this time (Exhibit 738) contained the same terms as the other companies, the sales tax being included.

E. Customer Classification

As has been seen, two main classes of customers are dealt with by the vulcanized rubber clothing manufacturers, viz., jobbers and retailers. Goods are sold to retailers at list prices and to jobbers at list less the Jobbers' Discount. There is no specific classification according to volume purchases, and the Jobbers' Discount is applied to purchases by any firm on the Jobbers' List without regard to the amount of those purchases. However, some large retailers, mainly department stores, are allowed the Jobbers'

Discount and are included in the List. As stated above (see Section D) the amount of the discount is generally accepted and applied by the members of the Group and the only questions which appear to have given rise to discussion among members at meetings or by correspondence are what qualifications should be required to enable a firm to receive the discount, and whether a given firm has met these qualifications.

A letter dated March 8, 1944 from H. S. Ireland of Canadian General Rubber to T. Y. O'Neill of Miner indicates common action in respect of the Jobbers' List as far back as 1938. The letter is as follows:

"Recently in checking up what Mr. Pequegnat considered to be an infraction of prices on our part on Vulcanized clothing, we found that our list of Jobbers did not agree exactly with his in so far as the Western Provinces were concerned.

The letter from Mr. Pequegnat dated March 6th. he requests how the following two names come to be on our list.

McLennan, McFeely & Prior,
Vancouver, B.C.

Merchants Consolidated,
Winnipeg, Man.

The first of the above names Mr. Pequegnat states was eliminated from the Jobbers' List in 1938, and he has no knowledge of the addition of the second name. I have tried to check the matter back here, but find that I go back into the time when this matter was taken care of by personnels that are no longer with us, and I cannot put my hands on any supporting details.

In view of this discrepancy, it will be my suggestion that all of us exchange Jobbers' List, to see that we are all working currently on the same basis. Incidentally, we also found that there were certain names on Mr. Pequegnat's list, that were not on ours."

(Exhibit 385)

This letter also indicates the manner of bringing about uniformity in the Jobbers' List during the time prior to G. B. Smith assuming the secretaryship of the Group. Information respecting jobbers lists was, in fact, exchanged about this time.

Exhibit 197 purports to set out the qualifications required of a firm to get on the Jobbers' List,

". . .

NEW JOBBERS.

It is understood that any new Jobber whose name is proposed for the Clothing Jobbers' List must, in addition to being eligible as a

legitimate Jobber and consented to by all companies, give a firm order for immediate delivery for rubber clothing valued at \$300 if in Quebec, Ontario or Provinces west thereof; or \$500 if in New Brunswick, Nova Scotia or Prince Edward Island. A Clothing Jobber must be prepared to stock rubber clothing for distribution from his place of business and have representatives on the road soliciting orders, in other words, his qualifications must be those of a wholesaler.

..."

(Exhibit 197)

Jobbers' qualifications were reviewed at a meeting of the Vulcanized Rubber Clothing Group held on August 10, 1945. An extract from these minutes reads:

"QUALIFICATIONS FOR JOBBERS' LISTS: After some discussion, it was agreed to abide by the existing set of qualifications for inclusion in the Jobbers' List. It was further agreed that any firm meeting these qualifications may be recommended for inclusion in the List and is eligible. The meeting reiterated the previous ruling that recommendations for the inclusion of firms in the list should be supported by the information listed in the minutes of the meeting of May 9th."

(Exhibit 963)

An exchange of correspondence between J. W. Bryant of Canadian General Rubber and a salesman in Edmonton shows that the policy of the Group with regard to jobbers' qualifications was followed by that company and that it prevented independent consideration by Canadian General Rubber of a particular account. The salesman, N. M. Adams, wrote to Mr. Bryant on May 6, 1946 asking about the price of ground sheets. He added:

"..."

I had occasion to quote on these last week to The Motor Car Supply Company. They are large wholesalers of sporting goods and camping equipment and would require between 12 and 24 dozen. They are not on our discount list.

..."

(Exhibit 220A)

Mr. Bryant replied on May 9, 1946:

"..."

As to the Motor Car Supply Company. As you say they are not on the list and it is doubtful if the Rubber Companies would consent to this name being added, but we can go through the routine if you secure a firm order of \$300.00 Net and supply the information as to whether they are bona fide jobbers and have travellers on the road, etc."

(Exhibit 220B)

Mr. Adams in his reply of May 11, 1946 pointed out that Motor Car Supply Company handle "...the largest amount of wholesale sporting goods equipment in Alberta. . .", with four branches and probably fifteen salesmen on the road. He couldn't understand why they had to give a minimum order of \$300 for a small item like ground sheets in order to qualify as a jobber. He wrote:

" . . .

I don't know what their order will be. It may be a gross it may be two gross. But we'd quote Eaton's or the Bay discount on a dozen or more. Why should a legitimate wholesaler have to pay more than a department store.

. . ."

(Exhibit 218b)

Mr. Bryant replied on May 21, 1946 in a letter that has already been referred to:

" . . .

The Jobbers' List set-up on the Rubber Clothing is simply this. The Vulcanized Rubber Clothing Manufacturers, that is Miners, Kaufmans, Barringham, C.G.R. and Tower have an Association which has nothing to do with any other rubber products whatsoever, with identical prices on identical garments and a Jobbers' List known to all and any additions to the Jobbers' List must be cleared by all Companies and the conditions are the proposed name but (sic) be a bona fide jobber, with travellers contacting the trade and must show their good faith by placing a firm order for \$300.00 Net. While the Miner Rubber Company and Kaufman Rubber Company were the first in the field and the Miner Rubber Company particularly had the pick of the jobbers, we do not experience any difficulty in getting a bona fide jobber on the list but, we must go through the routine and the same rule applies to all Manufacturers.

. . .

We note your remarks as to the Motor Car Supply Co. If these people have been getting a discount from any of the aforementioned Rubber Clothing Companies we would like to know whose line they are handling as the Motor Car Supply Company are not on the Rubber Clothing Jobbers' List. If however, they are prepared to place an order for say two gross Ground Sheets; we will propose their name, . . .

We appreciate your remarks in your letters and agree with most of your arguments but think that you will agree if all Rubber Companies are free to offer discounts to anyone it would lead to a very bad situation.

. . ."

(Exhibit 218c)

There is no evidence that Motor Car Supply Company were added to the list or given a jobbers' discount by Canadian General Rubber and there does not appear to be any doubt that the basis upon which this account was handled was that the industry agreement on jobbers' qualifications would be adhered to.

The procedure originally followed with regard to the addition of names to the Jobbers' List was that the name of the firm would be proposed at a meeting and the other companies would have an opportunity to check on the qualifications. Then at a subsequent meeting the name would be considered for approval or rejection. In cases where it met with the immediate approval of all Companies the addition might be approved by correspondence and then confirmed at the next meeting.

At a meeting held on October 5, 1945 the procedure was revised slightly:

". . .

JOBBERS' LISTS: It was agreed that in future a company which has any recommendations to make with regard to additions to the Jobbers' List shall write direct to the other clothing companies with a copy to the Secretary. The other companies shall investigate and clear their findings with the Secretary who, if all replies are favourable, will advise all companies that the account may be added to the Jobbers' List. If there is a difference of opinion, the Secretary will suggest a further check and discussion at the next meeting. . . .

". . ."

(Exhibit 962)

A further change was made at a meeting on November 9, 1945:

". . .

JOBBERS' LIST:

It was agreed that under the procedure for handling recommendations for the inclusion of accounts in the Jobbers' List laid down at the last meeting, there has been undue delay in clearing names. In order to correct this, it was decided that in future if no objection is lodged with the secretary within three weeks of the date on which an account was recommended for inclusion in the Jobbers' List, the account will automatically be included and the secretary will also notify all clothing companies. The addition of the account will be confirmed at the next meeting of the group.

". . ."

(Exhibit 961)

A memorandum dated May 25, 1945 from G.R. Bellinger of Barringham to the president of the company shows that the procedure for adding names to the Jobbers' List was followed by the Barringham company:

"Have you heard from the Association, anything regarding the names, which you put before them in the meeting at Montreal, on accepting Petch, or the three or four other names submitted to them, regarding the acceptance of their names to the Jobber's List. Petch, in Ottawa, will give me a confirmed order for Three or Four Hundred Dollars worth of merchandise for immediate delivery, if we get started, and will give us the prices of the Association set-up, if we can deliver the merchandise with the discount."

(Exhibit 714)

The name of C. H. Petch was submitted by Barringham and was approved and added to the Jobbers' List at a meeting of the Group on August 10, 1945 (Exhibit 963).

In a letter dated May 28, 1945 to their representative in Montreal, Mr. Bellinger wrote:

". . .

. . . Should we offer any account that is not on the Jobber's List a discount and a meeting is held, either in Montreal or Toronto, and the question comes up before the Board, your face is going to get damn red, if they ask you why you sold a certain account merchandise other than the set-up price. Now the fact remains, that should we ourselves find that they are passing out a discount to any of the accounts, kindly notify the writer and we will bring them on the carpet, instead of being on it ourselves. . . .

". . ."

(Exhibit 709)

Referred to Exhibit 709, G. R. Bellinger of Barringham stated:

"Q. I take it from this that there must have been some understanding among the manufacturers that you would not sell jobbers, or that you would not sell a jobber unless his name was on the list, whether it was adhered to or not.

A. That was the general understanding, but it was not adhered to."

(Evidence p. 2698)

In a letter dated November 5, 1945 to a firm which had given an order for some clothing, Mr. Bellinger wrote:

"On October 24th, 1945, you gave our representative, Mr. J. Walker, an order for Garden Hose and 'Wash' Aprons. The prices he quoted were from the Jobbers' List, and before filling these, we will have to bring your name before the Rubber Association and have it placed on the Jobbers' List.

". . ."

(Exhibit 730)

A letter dated January 2, 1946 from C. D. Pequegnat of Kaufman to the other members of the Group and to the secretary of the Association, shows that the procedure was also followed by Kaufman:

"We would like to propose the above firm for addition to the Protective Rubber Clothing Jobbers' List. We have received the initial qualifying rubber clothing order, and are holding same until approval of the addition of this account has been received from all companies.

". . ."

(Exhibit 215A)

The firm referred to was Fleck Bros. Limited of Vancouver and on January 3 the secretary of the Association advised the other companies that he had placed that name on the agenda for the consideration of the Group at the meeting to be held on January 11, and that he hoped they would complete their investigation by that time, otherwise "... the usual three week interval for registering objection will be allowed" (Exhibit 215C). At the meeting of January 11 (Exhibit 960) the firm was considered but apparently was not added because all the Companies had not completed their investigation. However on January 15 J. W. Bryant of Canadian General Rubber wrote to Kaufman and the other members of the Group and the secretary of the Association:

"We have now completed our inquiry as to the status of the above Company (Fleck Bros. Ltd) for addition to the Rubber Clothing Jobbers' List and are agreeable to this addition. Please advise when this name is to be officially added to the List.

..."

(Exhibit 215D)

At the meeting of March 7, 1946 the addition of this firm was confirmed by the Group (Exhibit 958).

An example of an application which was rejected by the Group is the case of W. J. Kent of Bathurst, who apparently applied for recognition as a jobber some time in 1945. In a letter dated October 12, 1945 to an agent in St. John, Mr. Pequegnat of Kaufman wrote:

"W. J. Kent is receiving a 15% discount on clothing from the Croydon Manufacturing Company, Montreal, the jobbers for the Barringham Rubber Company. Croydon used to handle our line, but we cut them off the jobbers' list because they would not respect the terms of sale. They have been put back on the jobbers' list again, and are being supplied by Barringham Rubber.

...

For the present we would suggest that you do not solicit the Kent account for clothing. Should you receive orders unsolicited, will you please send them to Head Office to the writer's attention.

We understand that Kent ran some sort of a wholesale business, but lately has been doing mostly retail business. We also understand that he sent out a flyer or small catalogue to the trade in the Bathurst area. We do not believe that Kent would qualify for the jobbers' list, but companies have been asked to investigate the account and report at the next rubber clothing meeting.

..."

(Exhibit 167)

The minutes of the next meeting of the Group on November 9, 1945 contain the following entry:

" . . .

The following accounts were considered for inclusion in the Jobbers' List but rejected:

W. J. Kent, Bathurst, N. B.

(Exhibit 961)

. . . " . . .

As already noted, W. G. Simpson, Sales Manager of Miner, testified at the hearing that there was agreement in the industry that certain qualifications were required before a firm could be added to the Jobbers' List:

"Q. Was there any understanding or agreement between your company and other companies in the industry that those were the qualifications that were required before a jobber could be added to the list?

A. That would come up before my time.

Q. But after, since you ---

A. I just carried along in the same way.

. . .

Q. But I am asking you whether you, of your own knowledge, knew of any such agreement in the industry?

A. Yes, I did."

(Evidence p. 1377)

Mr. Simpson also stated, at a later stage in his evidence, that, if he were fully satisfied that a man qualified, had men on the road and carried stock, he would put his name on the list independently of the action of the other companies and that he knew of no understanding that it was necessary to get all the Companies' approval before adding a name to the Jobbers' List.

Mr. Pequegnat of Kaufman testified that the industry policy with regard to jobbers' qualifications and the Jobbers' List was continued after price controls ended in April 1947:

"BY THE DEPUTY COMMISSIONER:

Q. More specifically, was the same arrangement which was in effect in 1944, and which continued down to at least 1946, whereby jobbers' list was discussed at meetings and it was understood that no jobber would be added to the Jobbers' list without the consent of the manufacturers - was that arrangement continued since April 1, 1947, down to the present time?

. . .

(The witness gave his evidence in October 1948)

A. You asked if we continued this program after controls were lifted.

Q. Yes, if you recall.

A. I say that there would be no change. We did not meet very often.

. . .

Q. And by the expression 'no change' do you mean that the arrangement did continue?

A. I would say yes, that it did."

(Evidence pp. 606,08)

Mr. Pequegnat also stated, at a later stage in his evidence, that, if he wanted to put a jobber on the Jobbers' List, he would notify the other manufacturers, and, if there was any objection but the objector could not prove that the name did not qualify, he would feel justified in going ahead and adding the name to the list.

A. J. Graham of Canadian General-Tower stated in evidence:

"Q. Will you tell me this: has there been any agreement on the part of your company, or arrangement, or understanding, either oral or verbal, since controls were lifted on April 1, 1947, with any other company or companies, making or manufacturing rubber clothing in Canada with respect to prices; has there been any agreement or understanding, oral or written, between your company and any of the other companies with respect to prices since the controls were lifted, either oral or in writing? I do not mean by way of any formal document.

A. I would say no.

Q. And during the same period, since controls, has there been any agreement by your company with any of the other companies manufacturing rubber footwear (sic) in Canada with respect to jobbers' list and discounts?

A. I am sorry - may I have that question again?

Q. During the same period, since controls were lifted, has there been any agreement, understanding or arrangement between your company and any other company or companies making or manufacturing rubber footwear (sic) in Canada with respect to jobbers and discounts?

A. We have discussed jobbers, and cleared jobbers through other companies, but nothing more than that. It was just a recognition, as I said before, of a leader in a field. We have to follow it. If we can improve or better him by price or quality, we will do it.

Q. I see. But has there been any understanding or agreement or arrangement about jobbers?

A. Jobbers' lists are more or less the same; but they are not all the same. I have taken and received or picked up a copy of Miner's jobbers' list, and I have seen where we have different names on our list.

BY THE DEPUTY COMMISSIONER:

Q. But has there been an understanding or arrangement or agreement with respect to that?

A. I can repeat, as I said before, that the list is wide open.

Q. Is there or is there not, yes or no?

A. In so far as I have covered it previously.

Q. Yes, but would you repeat it?

BY MR. SEDGEWICK:

Q. Could you say yes or no, and then explain?

A. I would answer it by saying yes, there is agreement.

Q. In what respect?

A. The minimum order to be placed, and the salesman on the road.

BY THE DEPUTY COMMISSIONER:

Q. Any other respect?

A. And that is not lived up to, even, at that, because there are jobbers without salesmen.

BY MR. DALEY:

Q. The question is as to the jobbers' list, not as to qualifications.

BY MR. SEDGEWICK:

Q. You have indicated that you felt perfectly free to add names to that list without consultation with other companies, is that correct?

A. Did I say I felt free; I thought I said I have done it.

BY MR. MARTIN:

Q. Yes, on one or two occasions.

A. Yes; I have done it.

(Evidence pp. 717-19)

It is apparent from the context that the references to footwear were a slip and that it was understood by all parties that the subject was rubber clothing. Neither Canadian General-Tower nor its predecessors manufactured rubber footwear, although they did make heels and soles.

The minutes of a meeting held on May 9, 1947 and attended by representatives of Miner, Kaufman and Canadian General-Tower contain a list of names of jobbers which were considered by the meeting. Some names were added to the Jobbers' List, some were rejected and some were held over for additional checking. The minutes also contain the following note:

"Turning to discussion of the Jobbers' List in general, it was suggested that the time had come to prune it of unsatisfactory accounts or accounts whose volume of business did not justify listing as jobbers. It was agreed, therefore, that all companies clear their 1946 sales to each jobber with the Secretary by May 19th, to be consolidated into a statement of industry sales to each jobber, with a view to deleting from the list all accounts whose purchases did not total a reasonable minimum figure. Sales of all items listed in the industry's classified range of protective clothing should be included in the figures submitted to the Secretary."

(Exhibit 212)

G. B. Smith, Secretary of the Association, when asked about this paragraph, said in evidence:

"Q. Was that practice carried out?

A. Yes, at least, all sales were submitted to me and I did compile a list. It was discussed at a meeting, if I recall correctly, but further than that I do not recall what took place, whether the list was actually revised or not.

. . .

Q. What was the subject of the discussion at the subsequent meeting when you presented the list to the members?

A. Well, it was a discussion of the people who were listed there, what volume they had, what they had from all four companies in the industry and whether or not they had bought sufficient to justify considering them jobbers.

Q. What action was taken on the list as presented to and discussed at the subsequent meeting?

A. I do not recall . . ."

(Evidence pp.3633,34)

Exchanges of correspondence relating to the addition of firms to the Jobbers' List show that the procedure was continued after controls. On June 6, 1947 J. W. Bryant of Canadian General-Tower proposed that the firm of Reliable Wholesale Ltd. of Vancouver be added to the Rubber Clothing Jobbers' List (Exhibit 410A). On June 9 G. B. Smith, Secretary of the Association, wrote to the four Companies advising them of this application and stated that ". . . In accordance with our arrangement, I shall add this name to the list in three weeks' time unless objections are received before that date" (Exhibit 410C). On the same day Miner wrote to agents in Vancouver asking them to investigate the applicant firm (Exhibit 410B) and, also on the same day, Barringham wrote to the other companies approving the application (Exhibit 410D). On June 12 Mr. Pequegnat of Kaufman wrote to the other companies that they would not be able to complete their investigation within the required time and added: ". . . We would like to have the privilege of withholding the addition of this firm to the jobbers' list until we are able to approve or disapprove of their inclusion in the list" (Exhibit 410E). Mr. Bryant's reply to this was that ". . . we would appreciate it however if you could get the necessary information from your representative in Vancouver within the required time of three weeks, as we have orders waiting for shipment. . . ." (Exhibit 410F). On June 20 Miner wrote to all members approving the application (Exhibit 410L). Then, on June 24, G. R. Bellinger of Barringham wrote to all members withdrawing the approval of that company. He wrote: "We wish to state that a report from our Vancouver representative has come in for the above mentioned concern stating that this company is a small . . . operator who would probably cause trouble by under selling his product at a discount to obtain results. Under the circumstances we do not recommend this concern to the vulcanized clothing jobbers' list" (Exhibit 213). On June 27 G. B. Smith wrote to Canadian General-Tower that ". . . I have received a report from one of the clothing companies taking objection to this account. In the circumstances, I shall hold this listing over for discussion at our next Clothing meeting" (Exhibit 410N). On July 9 Barringham withdrew its objection (Exhibit 410-O) and apparently Kaufman also approved, for, on July 15, Mr. Smith wrote to all members: "In view of the letter of July 9 from G. R. Bellinger of Barringham withdrawing his rejection to inclusion of this firm in the Clothing Jobbers' List, I am listing it as of this date" (Exhibit 311).

On June 13, 1947 G. B. Smith wrote to W. G. Simpson of Miner, with copies to G. R. Bellinger of Barringham, A. J. Graham of Canadian General-Tower and C. D. Pequegnat of Kaufman, as follows:

"RE: RUBBER CLOTHING JOBBERS' LIST--
Fraser Sales Ltd., 671 Danforth Ave., Toronto

I have to refer to your letter of May 31st recommending the above mentioned account for inclusion in the Clothing Jobbers' List.

All the other clothing companies have now written to me indicating that they question the eligibility of this account for inclusion in the Jobbers' List. Accordingly, I shall withhold listing for the time being and place this name on the agenda for discussion at the next Clothing Meeting."

(Exhibit 409)

On August 13, 1947 A. U. Oakie, Assistant to G. B. Smith, wrote to G. R. Bellinger of Barringham, C. D. Pequegnat of Kaufman, J. W. Bryant of Canadian General-Tower, W. G. Simpson and B. C. Armstrong of Miner, as follows:

"RE: AMHERST FOOTWEAR CO. LTD., AMHERST, N.S.

I wish to refer to our letter of August 5th in which we advised that Mr. Armstrong of the Miner Rubber Co. had proposed the subject account for addition to the Rubber Clothing Jobbers' List.

I have to advise that all companies have now replied indicating their agreement to addition of this account. Will you, therefore, add this account to your list effective as of today."

(Exhibit 312)

Exhibits 312 and 409, which indicate that Miner took the initiative in seeking approval of applicants for the Jobbers' List from the other companies, are significant in view of the evidence of Mr. Graham to the effect that "It was just a recognition . . . of a leader (Miner) in a field" (Evidence p. 718) and the evidence of Mr. O'Neill that "We would tell them what we were doing and so on" (Evidence p. 1207).

On September 29, 1947 G. E. Smith wrote to G. R. Bellinger, C.D. Pequegnat, W.G. Simpson and A.J. Graham as follows:

"This is to advise you that a rubber Clothing Meeting will be held in the office of the Rubber Association, Toronto, on Wednesday, October 8th, commencing at 10:00 A.M.

I assume that the principal subject of discussion will be a revision of the Jobbers' List, but if there are any other subjects you wish to have placed on the agenda, please notify me at once."

(Exhibit 153)

It is apparent from the evidence that the vulcanized rubber clothing companies succeeded in establishing and maintaining a common jobbers' list in the industry, to which the jobbers' discount should apply, and that applications to be placed upon such list were accepted or rejected by joint action at meetings or through the medium of correspondence.

F. Freight Charges

The following paragraphs are contained in Exhibit 197:

"PREPAY OR EQUALIZATION OF FREIGHT CHARGES.

All points at which Jobbers are situated are Prepay or Equalization Points for the manufacturers on their direct sales to Retailers or Industrial Accounts, but clothing shipments shall not be prepaid to points other than those enumerated above (the preceding paragraph lists 50 prepay points across Canada), excepting mines as described in following paragraph.

DELIVERY TO MINES.

Clothing will be prepaid or delivered to all mines in Northern Ontario and Northern Quebec or to the nearest railway point, but in no case is freight by air to be prepaid or allowed. Prepayment or free deliveries shall not be made to dealers in the same territory."

(Exhibit 197)

In the minutes of a meeting of the Vulcanized Rubber Clothing Group held on March 7, 1946 the following entry appears:

"TRANSPORTATION ALLOWANCES: In connection with sales to Eatons in Brandon, it was confirmed that any point in which a jobber is located is a prepaid point."

(Exhibit 958)

This policy has been followed by Miner (Evidence p.1207) and by Kaufman (Evidence p.620) and by Barringham (Exhibit 738B). The terms for the three companies are f.o.b. prepay points, and all use the same prepay points. The practice of Canadian General-Tower has been somewhat different. They have shipped 100 lbs. or over prepaid and under 100 lbs. collect, with the exception that shipments can also be f.o.b. Galt or branches and the branches are in St. John, Montreal, Toronto, Winnipeg and Vancouver. J. W. Bryant of Canadian General Rubber, in a letter dated February 14, 1946 in reply to the query of an Edmonton salesman regarding a "green list" showing prepay points, wrote:

"Referring to your inquiries in your letter of February 9th. The green list showing prepay points of Vulcanized Clothing was a set-up originally agreed upon between the Rubber Companies, but as far as you are concerned please stick to the terms '100 lbs. or over prepaid to any point on your territory and for lesser shipments the customer pays the freight or express.' We may say on less than 100 lbs. shipments we invariably send small parcels to Winnipeg Warehouse for re-shipment from that point, and in such cases we prepay to Winnipeg.

. . ."

(Exhibit 222C)

It is difficult to say precisely to what extent this variance in transportation terms resulted in a net price different from that of the other companies. Prepayment by Canadian General-Tower on orders of 100 pounds and over would be matched by the other companies in the case of the fifty or more prepay points across Canada. At least in the case of Canadian General-Tower's Winnipeg branch, its practice of shipping freight collect on orders under 100 pounds would be offset by its practice of sending small parcels to Winnipeg for reshipment. In any event, it would appear that any differences would be in the form of some slightly higher net prices for Canadian General-Tower. This seems to be borne out by the evidence of A. J. Graham of that company:

"Q. I notice in connection with these pre-pay points, in Exhibit 197, there is a list of pre-pay stock-carrying points set out?

A. We cannot meet Miner on that.

Q. That would be Miner's list only, would it?

A. Well, I could not say.

BY THE DEPUTY COMMISSIONER:

Q. It is not the list you follow?

A. I am aware of it, and our men complaint of it.

BY MR. SEDGEWICK:

Q. You do not use these pre-pay points when you ship?

A. We cannot afford to.

(Evidence p. 666)

The result is that three companies in the Group followed the same policy with regard to transportation charges, while the fourth company (Canadian General-Tower) followed a policy which meant that that company would, in some instances, sell at slightly higher net prices than the others.

G. Tenders

In many instances over a period of years the Companies had occasion to submit tenders to various Government departments for the supply of certain articles of vulcanized rubber clothing. The evidence indicates that the members of the Group from time to time discussed tenders and that they at times agreed to submit uniform quotations.

Exhibit 197 contains the following provision:

"PRICES TO FEDERAL GOVERNMENT DEPARTMENTS.

List prices less 15% and 2% Cash Discount, making terms Net 10th month following."

(Exhibit 197)

Notwithstanding this provision the evidence discloses instances where the Companies found it necessary to confer in respect of specific tenders. A letter dated February 28, 1946 from G. R. Bellinger of Barringham to T. Y. O'Neill of Miner, with copies to the other members of the Group and to the Association indicates such consultation. Mr. Bellinger wrote:

"No doubt you have a tender for the 10,000 Ground Sheets from the Department of Reconstruction at Ottawa, and being a member, representing Barringham Rubber Company, would it be in order to ask, as a group, what prices would be quoted for this particular item for the tender, should you be interested in it.

. . ."

(Exhibit 227)

On another occasion W. G. Simpson of Miner wrote the following letter, dated October 25, 1946, to C. D. Pequegnat of Kaufman, with copies to the other companies and the Association:

"We have to-day made a quotation to the Department of Reconstruction and Supply covering three Wading Suits. We are quoting a price on a medium size, - \$21.85; and for the extra large size, - \$22.80 each. Our price is sales tax included, F.O.B. Halifax."

(Exhibit 239A)

It is evident from other correspondence that the aim of the Group was to ensure that uniform tenders were submitted. On May 13, 1946 Mr. Simpson of Miner wrote the following letter to Mr. Bellinger of Barringham, with copies to the other companies:

"We are attaching hereto, confirmation of a telegram sent to you to-day in regard to prices to be used on the Post Office tender for Leggings and Capes."

(Exhibit 233)

Through some mistake Canadian General Rubber did not receive the telegram and, on May 14, Mr. Simpson wrote to Mr. Graham of that company:

"Yesterday we wrote you, enclosing a confirmation of a telegram that we had sent you, reading:-

'QUOTE POST OFFICE PRICES AS LAST TENDER LEGGINGS \$1.35
CAPES \$4.35 SALES TAX INCLUDED.'

This telegram was sent to the Local Telegraph Office for despatch to you and was forwarded with your name and also the Barringham Rubber Company and the Kaufman Rubber Company on it. . . .

. . ."

(Exhibit 234)

On February 6, 1947, with regard to another tender to the Post Office Department, Mr. Bellinger of Barringham wrote to Mr. O'Neill of Miner, with copies to the other companies:

"Today we have received from the Post Office Department, Equipment and Supply Branch, two tenders for File No. 1154-D for 1500 rubber capes and 1,000 pairs of rubber leggings from File No. 1162-D.

It would be appreciated very much if you would give us your quotations on these items so we can all have the same price.

. . ."

(Exhibit 158)

T. Y. O'Neill, formerly of Miner, stated in evidence that it was the practice for the members of the Group to let each other know what they intended to quote on Government department tenders. He denied that they were the subject of agreement. His evidence was in part as follows:

"Q. Can you tell me something about the question of tendering to the government?

A. Well, we used to phone or let the other companies know what we intended to quote.

. . .

BY THE DEPUTY COMMISSIONER:

Q. What was your purpose in phoning or otherwise letting the companies know what you intended to do?

A. Just following general procedure which we had adopted from the first, and letting them know what we were doing.

BY MR. O'DONNELL:

Q. From the first-- when other people came into that particular branch of the rubber business?

A. Yes.

BY MR. MARTIN:

Q. During this time, I gather from what you say, there was not any understanding or agreement between the rubber clothing manufacturers with respect to government tenders?

- A. Not beyond the fact that we would clear the prices with them and let them know."

(Evidence pp. 1219-21)

Referring to the telegram mentioned in Exhibit 234:

- "A. It looks like a definite order.

Q. Do you recall -

- A. Not that particular one, no. We gave them our prices in a little different form to what we had been giving them. We said, 'Quote Post Office prices.' We thought perhaps that would keep him in line. I don't know whether it did or not."

(Evidence p. 1221)

A. J. Graham of Canadian General-Tower stated:

- "Q. Do you recall receiving the telegram? Apparently it is addressed to you.

- A. It is apparently addressed to me. It is possible that I might have been out of town on May 13.

- Q. Do you recall this particular matter about the tendering on these leggings and capes?

- A. I cannot say that I recall particularly the incident. I have looked at these wires since the files were returned to us.

- Q. Now, the only thing I was wondering about is that that telegram says --

Quote post office prices as last tender leggings
\$1.35 capes \$4.35 sales tax included.

It appears that Miner was telling you what to quote, there; is that so?

- A. I will repeat what I said before, that Miner cannot tell me what to do. I do not take my orders from Miner.

BY THE DEPUTY COMMISSIONER:

- Q. I realize that; but in this case they were telling you. Why was it?

- A. It would appear that they were telling me, and I would say it is a very domineering attitude to take. They cannot tell me to do that."

(Evidence pp. 708,09)

"Q. Did you ever make any request of Miner or any other rubber company for information as to prices they were going to quote on tenders?

A. No.

Q. And did any other company ever ask you for information you were going to— information as to prices you were going to quote on tenders?

A. No "

(Evidence p. 713)

C. D. Pequegnat of Kaufman testified that on certain standard garments it was their practice to allow "the recognized 15 per cent government discount" (Evidence p. 614) when quoting to Government departments, and that with regard to special articles not ordinarily made for civilian use, "we have notified competitors that we were tendering and what our price was. We have been informed at times by other companies that they were tendering and what their price was on a special garment" (Evidence p. 615). The purpose was "that they would have the option of using our price or quoting any price they liked" (Evidence p. 615).

It was nowhere suggested that due to shortages or otherwise the supplying of garments in these cases had become a duty to be shared rather than a privilege to be competed for. On the contrary, Mr. O'Neill stated that too often for their liking Miner lost the business because some other party in fact underbid Miner.

The whole purpose of inviting tenders is to encourage independent bids. Not knowing what the other competitors will bid, the tendency is for each to enter a bid, not below the minimum margin he feels he can take, which he hopes will be just a little more attractive than any other. For these reasons, when bidders are actually in competition, the amounts of their bids are jealously guarded. An admission of exchange of information beforehand is ordinarily only consistent with an understanding as to prices.

Chapter 3 - Maintenance of Agreements

A. Resale Price Maintenance

There is no evidence of any attempts by the Companies in the vulcanized rubber clothing industry to regulate retail prices to the consumer. But there is little doubt that the members of the Group made efforts to ensure that the prices to retailers were maintained at list. Not only was each company concerned about its own jobbers but also that the jobbers of the other companies should maintain list prices. Because all companies sold both to jobbers and retailers they felt that any price cutting on the part of jobbers would work to their disadvantage in sales to retailers. Furthermore since they had agreed to sell at uniform prices and discounts they found that it was necessary to keep all jobbers in line in order to protect their price structure.

It is evident from the testimony of T. Y. O'Neill, formerly of Miner, that the Companies required their jobbers to maintain list prices:

"Q. Can you tell me if at that time there was any agreement among the manufacturers of rubber clothing with respect to resale price maintenance?

A. No; in fact, it was understood that jobbers would sell at list prices. That was our company's understanding -- and the other companies do that too.

. . .

BY MR. MARTIN:

Q. When you refer to an understanding, do you mean an understanding between yourself and other companies, or how do you mean it?

A. We had started in by giving jobbers 15 per cent. We had established our own list of jobbers.

BY MR. O'DONNELL:

Q. Miner had?

A. Yes, Miner. And to that list have been added other names as time went on. Well, the same understanding among all companies prevailed -- they in connection with their jobbers, and we with ours -- that they would maintain list prices when reselling. It is a very common business practice, that. We were selling through our own branches to the retail trade at list prices."

(Evidence pp. 1214,15)

There is also evidence that the matter of resale price maintenance was discussed by correspondence and at meetings of the Group and that the members were prepared to take joint action to require jobbers to respect list prices.

The minutes of the meeting of October 5, 1945 contain the following item:

"SALES BELOW LIST BY JOBBERS: Mr. Graham raised the point that some volume accounts are almost certainly receiving discounts from the jobbers from whom they buy and that something should be done to check this practice. In the discussion which followed, it was pointed out that it is usually very difficult to obtain definite proof that discounts are being granted, and that without such proof, nothing can be done. It was suggested that if Mr. Graham could obtain definite evidence, such, for example, as invoices showing a discount, disciplinary action could and would be taken against the guilty jobber when conditions permit. At present however, W.F.T.B. regulations prevent effective action."

(Exhibit 962)

Another aspect of the same matter was dealt with at the meeting of January 11, 1946 when a plan was proposed to ensure that articles sold by a wholesaler-retailer through his own retail outlet would be charged to him at the price to retailers without wholesaler's discount:

". . .

In the course of the discussion regarding James Simmonds Ltd., it was decided that companies should make a survey of the prices at which wholesale-retail accounts are making their retail sales. It was also agreed that when price control ceases to be effective consideration be given to adopting a plan for sales to wholesale-retail accounts similar to that enforced by rubber footwear manufacturers. Under this plan such accounts would be invoiced for all goods at list but would receive a rebate of discount covering their sales to outside accounts at the end of each month on submitting a debit note with attached copies of invoices proving that the goods had actually been sold to these outside accounts.

". . ."

(Exhibit 960)

The case of the Croydon Manufacturing Company is another example of such joint action. The Croydon Manufacturing Company, headed by a Mr. Tony Straessle, is a Montreal firm which manufactures and distributes certain types of clothing, including some cloth waterproof garments. At one time they also acted as jobbers for the distribution of vulcanized rubber clothing made by the members of the Vulcanized Rubber Clothing Group. This clothing was distributed by them to dealers and retailers who also handled Croyden's own products and apparently it was their policy to pass on to their

customers all or part of the discount which they had obtained as jobbers, with the object of encouraging the customers to buy Croydon products. For this practice Croydon were cut off the Jobbers' List and the members of the Group refused to supply them at other than list prices. That this action was taken is indicated in correspondence and in oral evidence. In a letter dated October 12, 1945 addressed to one of their branches, Mr. Pequegnat of Kaufman wrote:

"... Croydon used to handle our line, but we cut them off the jobbers' list because they would not respect the terms of sale. They have been put back on the jobbers' list again, and are being supplied by Barringham Rubber.

..."

(Exhibit 167)

In a letter, dated May 21, 1946 to a salesman in Alberta, J. W. Bryant of Canadian General Rubber wrote:

"..."

We note that Dower Bros. have purchased Rubber Clothing from Croydons at discounts, but we think that this was some time ago as Croydons were cut off the list at one time for this practice and will be cut off the list again if we can prove they are giving discount.

..."

(Exhibit 218c)

T. Y. O'Neill, formerly of Miner, stated in evidence that they did not cut Croydon off the Jobbers' List, but merely refused to sell them at jobbers' prices. This is a distinction without a difference. Whether or not the name of Croydon was physically on the Jobbers' List, it appears that they were unable to obtain jobbers' prices from any company in the Group manufacturing at the time of their deviations.

When Barringham joined the Group in 1945 they applied to have Croydon placed on the Jobbers' List again, and the Companies agreed to do so on the understanding that Croydon would maintain list prices. This is substantiated by the evidence of Mr. Pequegnat of Kaufman:

"BY THE DEPUTY COMMISSIONER:

Q. That is my point. When they were put back on the jobbers' list again, was it done at a meeting at which you consented?

A. Yes, but that does not necessarily say we have to sell them.

BY MR. MARTIN:

Q. But did you consent to putting him back on?

A. Croydon agreed to live up to the jobbers' terms and when Barringham made the application to put him on the list we consented.

BY THE DEPUTY COMMISSIONER:

Q. On the understanding that he was going to live up to the jobbers' terms?

A. Yes.

Q. Would you say that was a condition in connection with your consent, that you would not have consented if there had not been that agreement?

A. Barringham gave the group the assurance that he would do that.

Q. Yes; when he was taken off the jobbers' list, was it your understanding that that meant that none of the clothing manufacturers could sell to him?

A. They would sell, but not at jobbers' discount."

(Evidence pp. 602,03)

However, it appears that despite the fact that they were put back on the Jobbers' List, and despite Mr. Barringham's assurances that they would live up to jobbers' terms, Croydon continued to sell vulcanized rubber clothing at less than list and in some cases at prices which may have meant operative loss on this product. The members of the Group were concerned about these activities, and at a meeting of the Group Mr. Barringham was delegated to pay a visit to Mr. Straessle of Croydon and try to persuade him to stop cutting prices. Mr. Barringham did confer with Mr. Straessle and in a letter, dated May 21, 1945 addressed to officials of each of the other three companies, he referred to the meeting:

" . . .

After I left you in Montreal I went down to the Croydon Company, and had a very nice talk with Mr. Tony Straessle, but unfortunately, I didn't get very far with him. So rather than put this long story in a letter, I think it would be better if I made a personal report to you and the group at our next meeting:

Incidentally, when I left him, I asked if it would be agreeable if I had you (Mr. O'Neill), Mr. Pequegnat, Mr. Graham and myself drop in to see him at his office on our next visit to Montreal, and he said he would be very happy to have us come and discuss this matter together . . .

If this suggestion meets with the group's approval I'll arrange a meeting the next time we meet in Montreal. . . . because it would seem to me, that this question is the most important item to get settled.

. . ."

(Exhibit 712)

On May 28, 1945 Mr. Barringham wrote to Mr. O'Neill of Miner, and described what had occurred at his meeting with Mr. Straessle:

"I have your letter of the 24th instant and am going to advise that I had a very nice interview with Mr. Straessle concerning this matter, but he took the attitude that if he had any trouble in getting his supplies from the group, he would simply start in to manufacture vulcanized clothing himself. In other words, he said he would buy the material in rolls and put in a vulcanizer of his own and make his own goods. I pointed out the difficulty and trouble he would have in pursuing course of this kind and that it would be much better for him to try and co-operate with the group and keep the industry healthy. We discussed the matter pro and con and he pointed out to me some of the troubles that he has had with the group cutting him off in the past and that he would not tolerate or be inconvenienced this way again.

I really believe, that we can handle Tony if Peg and you and I would call on him and sit down and stress the advisability of him trying to co-operate with us . . . I feel quite confident that if we do, we can get Tony in line even tho we might have to give him some concessions, it will be better to have him in our group working with us, than out on his own working against us."

(Exhibit 715)

Mr. O'Neill of Miner also had an interview with Mr. Straessle and attempted to reach an understanding with him. The following entry appears in the minutes of a meeting of the Group held in Montreal on August 10, 1945 and attended by representatives of all the Companies:

"CROYDON MANUFACTURING CO.: Mr. O'Neill tabled two lists of accounts dated July 23, 1945 to whom Croydon is granting discounts of 10% and 15% respectively. When supplying these to Mr. O'Neill, Croydon had agreed definitely not to extend discounts to any accounts not now receiving them, . . .

On examining these lists, it was apparent that the firms on the 10% discount list were all retailers and it was agreed that the rubber clothing manufacturers would continue to maintain list prices to these firms. . . .

Mr. O'Neill will call on Croydon again to press for complete lists of firms to which they are selling at discounts or at other than regular list prices and to advise them to try to discontinue these practices as quickly as possible."

(Exhibit 963)

The minutes of a meeting of October 5, 1945 contain the following item:

"CROYDON MFG. CO: Mr. O'Neill reported that Croydon had been interviewed again regarding accounts to which they are extending discounts and had been able to find only one additional name, Greenberg, of Montreal. This account is not a wholesaler, but operates a chain of seven retail stores. Croydon is giving them 15% off. Croydon will have to consult their Maritime salesman before being able to give a final list of firms receiving discounts."

(Exhibit 962)

The list of accounts to which Croydon was giving 15 per cent off was reviewed and some were added to the Jobbers' List, some rejected and some reserved for further checking. The item concludes:

"It was agreed that the Miner Rubber Co. will keep in touch with Croydon re discounts but that there is nothing further to be done at present."

(Exhibit 962)

It appears that this was as far as the Group was prepared to go in its later dealings with Croydon. The threat of Mr. Straessle to go into production himself may have been effective and he continued being supplied by Barringham until the end of 1946 when that company ceased production (Evidence p. 2658). It is not known with certainty whether or not any of the other companies later supplied Croydon at jobbers' prices, although Mr. Feuegnat of Kaufman has said that they won't sell Croydon (Evidence p. 601) and Mr. Graham of Canadian General-Tower testified that his company sold to Croydon in 1946, but at net prices (Evidence p. 698). Mr. O'Neill, of Miner, said that his company refused to sell Croydon at jobbers' discount when it appeared that the latter would not maintain resale prices (Evidence p. 1218).

The evidence, therefore, indicates joint action on the part of the Group in respect of Croydon, not only to prevent him from giving away his discount to encourage the sale of his own line of clothing but also to try to bring about a strict adherence to list prices.

B. Surveillance

On the whole the problem of maintaining the Group agreements did not present much apparent difficulty. The industry is small, the manufacturers few, the degree of cooperation great and the Companies themselves were in most cases prepared to abide by the agreements. However, there is evidence of some instances where complaints have been made or suspicions voiced that a member of the Group was not adhering to the agreed prices or Jobbers' List. The following extracts from a letter, dated December 22, 1943 from T. Y. O'Neill of Miner to a branch official in Toronto shows the seriousness with which suspected infractions were treated. Mr. O'Neill, referring to an application by a firm to be placed on the Jobbers' List, wrote:

"You will remember that sometime ago, you mentioned that this concern had asked to be placed on the Clothing Jobbers List, and that you were under the impression that they were getting jobbers prices from Messrs. Kaufman.

I took this matter up with Mr. Feuegnat, the Kaufman Sales Manager, and he writes in reply that they have sold some clothing to Crawley-McCracken during the past few years, but have not recently been asked to sell them at other than list prices. In the same letter it is stated that Crawley-McCracken's name had been brought up before in connection with their application to be placed on the Clothing Jobbers List, but that their application was not favourably received, and their name was not placed on the list.

Unless you can give us some evidence that we can place before Messrs. Kaufman to prove our point, we don't think that there is any use of following the matter up further.

If Crawley-McCracken are getting a discount from Kaufman, we would certainly very much like to get some evidence to that effect, and even if evidence is not procurable, we would like you to go into the matter again to see if your suspicions are confirmed."

(Exhibit 414C)

In another letter, dated May 15, 1944 relating to the same subject, Mr. O'Neill wrote:

"You ask again in your letter of the 12th instant for permission to extend a 15% discount to Crawley-McCracken, but we are in exactly the same position as we were when this matter came up in December last. At that time we wrote that the matter had been taken up with the Kaufman Sales Manager, and that he had replied that Kaufman had not sold this account clothing at the jobbers' discount.

It would be an easy matter to bring this account up again by correspondence, but I don't think that there is any doubt but that we would receive the same reply from Kaufman. I will make a note though, to bring the matter up for discussion at our first clothing meeting, which may take place in the near future.

. . ."

(Exhibit 414F)

Another indication of checking up on the agreements is found in the letter, dated March 8, 1944 from H. S. Ireland, General Manager of Canadian General Rubber, to Mr. O'Neill:

"Recently in checking up what Mr. Feuegnat considered to be an infraction of prices on our part on Vulcanized clothing, we found that our list of Jobbers did not agree exactly with his . . .

. . ."

(Exhibit 385)

On another occasion Kaufman refused to supply clothing to a firm in North Sydney, Nova Scotia at other than list prices because they were not on the Jobbers' List. The order had been submitted by an agent in Nova Scotia who said he presumed the firm were on the List because they were apparently getting jobbers' prices from other members of the Group. C. D. Feuegnat, of Kaufman, in his reply to the agent dated April 10, 1945 wrote:

". . .

"With regard to Jos. Naddaf in North Sydney, this account is not on the jobbers' list and is only entitled to rubber clothing at list prices. If they are getting a discount we would like to know what brand of rubber clothing they are buying and the name of their supplier.

. . ."

(Exhibit 169F)

In a further letter, dated April 16, 1945 on this subject, Mr. Feuegnat wrote to the agent:

"Received your letter of April 13th and also April 12th enclosing an order for Joseph Naddaf, North Sydney, N.S. This account does not appear on the Rubber Clothing Jobbers' List, copy of which we are attaching for your guidance, and which has been adopted by all vulcanized rubber clothing manufacturers, including the newly organized Barringham Rubber Company, Oakville.

. . ."

(Exhibit 168e)

Mr. Feuegnat decided that they would not extend jobbers prices to the firm and, having failed to obtain enough evidence to establish the

identity of the company (if there was one) which was giving them jobbers' discounts, declined to pursue the matter further. On December 17, 1945 he wrote to the agent in Nova Scotia:

"... in the meantime, I think there is not much to be gained by charging Tower Canadian and Miner's with infractions . . ."

(Exhibit 168a)

A letter, dated July 4, 1945 from G. R. Bellinger of Barringham to a firm of wholesalers in Vancouver shows that they were concerned with keeping the Jobbers' List within the bounds of industry agreements:

"Thank you very much . . . for the information regarding the Canadian Fishing Company, Limited, with reference to getting a discount on Vulcanized Clothing.

I have checked into the names of the Association, and those who should receive a discount legitimately, and the Canadian Fishing Company, Limited, are not on the list of discounts for Jobbers.

We thank you for this information and if you can find out who has been selling them, it will be very much appreciated by us.

This will be reported to the next meeting of the Rubber Association Clothing Division and investigated for your information, and we will pass on to you the comments from the other manufacturers."

(Exhibit 722)

The memorandum dated April 18, 1946 from J. W. Bryant of Canadian General Rubber to one of their salesmen already referred to in another context, indicates that that company was checked by Miner for having broken the terms of the industry agreement:

"We have just been checked up by the Miner Rubber Company Limited, for allowing Wm. Sumarah & Sons of Magdalen Islands 15% discount, instead of the 10% which applies on shipments to Magdalen Islands.

Please do not offer the 15% discount in future, as they are definitely not on the jobbers' list and do not know how it came about they received the 15% discount."

(Exhibit 235c)

C. Oral Evidence Generally

It was consistently denied in the oral evidence that the inter-relationships among the parties amounted to an agreement to fix prices, although in some cases it was admitted that there was understanding on such related matters as the Jobbers' List. It was stated sometimes that what was being done amounted only to an exchange of information and much emphasis was laid both by Miner and other companies upon the position of leadership which Miner occupied and the necessity experienced by the other companies to follow Miner's prices and practices. The following extracts are typical in this respect.

A. J. Graham of Canadian General-Tower stated:

"A. I must frankly admit that Miner lead the parade and we follow. We certainly cannot be cheaper and we cannot stay in business and be higher.

Q. Miner has the bigger share of the market in rubber vulcanized clothing?

A. They really have, but we are forced to sell at the same price as Miner. We cannot get higher.

BY MR. SEDGWICK:

Q. Can you afford to sell lower, from a business point of view?

A. No, rubber clothing this year, I took the figures off and we are trading dollars.

BY THE DEPUTY COMMISSIONER:

Q. What do you mean by that?

A. We give a dollar's worth of merchandise and it costs us a dollar to sell it. It is a no-profit line.

BY MR. MARTIN:

Q. How did it come about that your company, you say you just followed Miner's prices. Was the question of price ever discussed, I mean at any of your association meetings and, by that, I mean, was there any agreement or any arrangement made with respect to price or how was this done?

MR. SEDGWICK: Are you referring to the whole period?

BY MR. MARTIN: Since Mr. Graham has been there, 1943, I think he said.

THE WITNESS: I do know that Miner recommends -- we can find out on the same day if their price has changed, so if their price goes up we can find out on the day that it does. We have our friends in the business and if Miner goes up on a garment in that line, if they go up 5 per cent, I can assure you I will be up within the hour, because I will find out. That is what I should like to do. Miner, having a high percentage of the business, are keen enough to keep their prices down low and they have it established, so far as we are concerned, as a no-profit line."

(Evidence pp. 658-59)

Again, referring to Exhibit 218c, which appears on page 614 A. J. Graham of Canadian General-Tower said:

"Q. With identical prices on identical garments; the garments are not identical, but are the prices identical on similar garments?

A. Insofar as it is possible the prices are identical on similar products.

Q. Is that true today?

A. Yes.

Q. Well now, how did that come about? This question of identical prices on similar garments, how did that come into effect; was it by arrangement or agreement or how?

A. I can only answer that by saying we recognised Miner as the producer and we have to sell at identical prices or go out of business."

(Evidence pp. 689-90)

T. Y. O'Neill of Miner stated:

"Q. Can you tell me how often the meetings were held, that you recall? I am referring to that same period, up to September 1, 1939.

A. I can't tell you with any definiteness. We met three or four times a year, I should say.

Q. Can you tell me what was discussed at the meetings?

A. We exchanged information about various things in connection with the industry. I want to make it clear, though, that in so far as our position in the industry was concerned, we held the commanding position.

Q. You were the leader?

A. Yes, we were the leaders. We had pretty well made up our minds -- we had made up our minds before we went to those meetings what we wanted; and we told the other fellows. That was the usual procedure. They might or might not fall in line with what we said we were going to do. That developed afterwards.

Q. And when you say that you told the other people, do you mean you told them as far as the question of prices was concerned what you were going to do?

A. Yes, quite true.

Q. What about the other branches of merchandising, so far as jobbers were concerned; was there a jobbers' list established?

A. Yes.

Q. And with the different discounts given to different types of jobbers?

A. No, they were all outright purchases. There were a few commission jobbers -- those were the only two.

Q. Anybody on the jobbers' list was entitled to the same discount?

A. Yes; most of those jobbers, though, I mean to say, were our jobbers; that is, we had commenced and established it, and got in a position, or had been in a position to get the best class of jobber with the widest distribution. But the other companies were at liberty to sell to them if they could. We tried to prevent that, so far as we could, by competition, and by quality of garments."

(Evidence pp. 1194-95)

Referred to Exhibit 385, which has been set out at page 624 T.Y. O'Neill of Miner stated:

"Q. Could you tell me about any additions or deletions to the list? I mean was it done by your company alone or did you do it in consultation with the other companies or how was it done?

A. Well, we had certain qualifications which we had --

Q. For a jobber?

A. Yes.

BY MR. O'DONNELL:

Q. That is the Miner Company?

A. Yes, Miner had, and the other companies had been told of that and were following the same line.

BY MR. MARTIN:

Q. Those are the qualifications you referred to which are set out in that last document, Exhibit 197, that he had to have a firm order of \$300 and \$500 in the maritimes?

A. Yes, and he had to have a representative on the road. In other words, he must be a qualified jobber doing a bona fide jobber business in order to do a job for us. That is what we give him a jobber's discount for.

Q. Were people, from time to time, added to the list?

A. Yes.

Q. Could you tell me how that was done?

A. Well, the suggestion was made to us that they should be added. We investigated and if we found that they qualified, no matter whether we wanted them on there or not, they went on in justice to them.

BY MR. O'DONNELL:

Q. 'Them' that is the people who wanted to be placed on the list?

A. Yes, in justice to the jobber who had qualified.

BY MR. MARTIN:

Q. Was it done in consultation with the other companies? It was not done by the action of one company, for instance, or could they put a man on the jobbers' list if they wanted to?

A. They wrote us about it and we expressed an opinion after looking into his qualifications. If we said he was not to go on, he did not go on. As I say, we had pretty well the upper hand in that. I might say it was a very fair arrangement to exclude retailers and those who could not perform a job for us because we were giving a special discount for selling our goods. We got all kinds of applications from dealers in that line of business throughout Canada, for inclusion on the jobbers' list.

Q. Which would give them an extra discount?

- A. Which would give them an extra discount, yes, and we found, sometimes, that some of the other companies would be giving an extra discount without clearing the jobber's name. We tried to get at the bottom of that."

(Evidence pp. 1209-11)

Generally speaking, the evidence, except where particular practices are admitted, is to the effect that the documentary evidence is not to be construed as indicating agreements or understandings but merely the exchange of information or the following of Miner.

There can be no doubt that Miner must in any case have asserted a strong influence upon the prices and practices of the other companies in the industry. There is however, a vast difference between a situation where each of a number of competitors usually follows the pattern of the leader as a matter of independent action and the situation where the pattern of the leader is followed by all the companies by reason of an agreement to that effect. In the first case, the competitors deal with each situation as it arises and if, at any time, it appears to the advantage of a competitor to behave differently, there is no obstacle in the way. In the second place, the companies have committed themselves beforehand to the elimination of competition as a general practice. It would appear that the situation in the vulcanized rubber clothing industry falls in the latter category.

PART VIII - CONCLUSIONS

Chapter 1 - Introduction

Before proceeding to state the conclusions that combines existed in the different branches of the rubber industry which were inquired into, it seems desirable to make some general comments upon the evidence and the submissions made on behalf of the parties affected.

A. Documentary Evidence

Approximately 4,000 documents were received from the files of the parties concerned in this Report. The Report largely depends upon the material contained in such documents and an endeavour has been made to let such documents speak for themselves. Such documents, as will have been noted, include mainly minutes of meetings, correspondence passing among officers and officials of the Companies and the Rubber Association and price lists.

B. Oral Evidence

In addition to the documentary evidence, oral evidence, running into approximately 8,000 pages, was taken from some 84 witnesses, including officers and officials of the Companies and the Rubber Association, and J. A. Martin who played a prominent part in rubber supply and price control and was Rubber Controller and Rubber Administrator from early 1945 to the end of the control period. The questions asked the witnesses related to the interpretation of the documents and the circumstances under which they had been prepared; to the situation under wartime controls; and to other matters including the practices of and general information relating to the different branches of the rubber industry.

From time to time throughout the preceding Parts, the oral evidence has been reviewed in its application to the particular matter under examination. Much of the oral evidence however, lends itself to more general treatment because it dealt with similar matters - frequently in similar ways - and to have examined it in every context would have been repetitious without being helpful. Some general comments may therefore be made.

In the first place, no question was raised as to the authenticity of any document: it was not stated that any document purporting to have been prepared by an individual had not in fact been so prepared, nor was it anywhere suggested that documents found in files were improperly there.

On the other hand, as will have been observed, many questions were raised as to the correctness of documents and as to the intention of documents and as to the construction which should be placed upon them. Where minutes or correspondence recited or implied agreements and understandings it was frequently asserted that the choice of wording was unfortunate and misleading and that the circumstances had in fact amounted to no more than an exchange of information, or a recommendation, or a declaration by

one of the parties - perhaps the leader in the field - of his own, self-determined policy. In at least one instance it was suggested that what was being exchanged under the guise of agreement was not even information but misinformation.

Sometimes the explanation was put a little differently, to the effect that what the parties undertook by "agreement" and like words was not such a firm agreement as committed the participants to an arrangement in restraint of trade; and it was frequently stressed that no sanctions were available to enforce any agreement. At other times it was stated that the parties had no intention of adhering to what were described as agreements and one witness used the expression that they had been entered into "with tongue in cheek". These different explanations are not set out here to suggest that they were always or frequently in conflict. Sometimes when more than one was directed to the same matter, they were seemingly incompatible. Sometimes when directed against different matters, no contrast was necessarily involved. A typical example of the statement that words were poorly chosen is contained in the evidence of C. B. Parsons of Dominion relating to the keeping of minutes by G. B. Smith who as Manager and Secretary of the Rubber Association also acted as Secretary of various meetings of different Groups:

"Q. This language used here is 'agreed' and I assume it is agreed by those at the meeting that the opening date shall be April 7th. It does not say that the rubber controller agreed that the opening date shall be April 7th?

A. This word is often wrongly used by the secretary. It was recommended we use that date."

(Evidence p. 1837)

and later on:

"Q. I draw attention to the language used there (the word 'agreed').

A. Yes, I know. That is Smith again - Greig Smith."

(Evidence p. 1936)

Asked why he had not complained about these inaccuracies the witness replied that he did not consider it necessary; that the subject matter did not warrant complaint. The evidence of the secretary himself in respect of the minutes is reviewed in Chapter 4 of Part I.

If the questions to be decided in this investigation turned upon one or a small number of documents, it might be a very difficult matter to decide whether the literal meaning of a document or the recollection or impression of a witness as to its intent should be taken to govern. However, it is not here a question of one or a few documents, but of many, and the use of such expressions as "agreed", and the implications of agreement, are copious. Furthermore, where the evidence indicates that an ostensible agreement was believed to have been broken, it also indicates that the party responsible was ordinarily charged with the deviation and that he ordinarily replied to the charge, all in a manner clearly indicative that adherence was expected. The fact that sanctions or penalties were not available does not of course make an

agreement ineffective or prevent it from coming within the terms of the Combines Investigation Act.

Upon the whole it would appear that reliance upon the repeated statements and the indications of agreement in the many documents is completely justified.

As to the statements that the agreements were entered into with tongue in cheek and in any event were not effective, it should be noted that a combine is the agreement, not the carrying out of the agreement, but furthermore, it is extremely unlikely that businessmen of the standing of those involved in the correspondence and minutes under review would continue over long periods as they did, to attend meetings and receive minutes and write letters about the subject matters unless they took them seriously and believed they were serving their apparent purpose.

Chapter 2 - Defences Raised in Argument

The Commissioner had the advantage of hearing argument lasting three days during which the case for the parties concerned in the investigation was put forward ably and strongly by eminent counsel. A number of matters raised will be dealt with in this Chapter and others will be dealt with in the succeeding Chapters 3 and 4.

A. Wartime Considerations

It was argued to begin with that "during the whole of the control period the rubber industry was completely controlled, and that everything it did was necessary in the light of conditions as they then existed" (Record p. 8182). This argument went on to submit that any joint measures that extended into the post-control period - brief in some cases - which is covered by this Report were merely in the nature of orderly decontrol, enjoined upon the industry at the same time by its own reasonable needs and in vane by the wartime control authorities. The argument proceeded as follows:

"... when controls ended in 1947 the industry was invited to set up a measure of self-control to cushion the shock of the transition period from rigid government control to a completely free competitive industry. . . .

... the industry was invited to continue a large measure of self-control as that was thought to be in the general interests of the Canadian public . . ."

(Record pp. 8207-08)

In support of this argument reference was made to an interview at Ottawa in October 1946 when the Rubber Advisory Committee of the Department of Reconstruction and Supply submitted a brief to the Minister deprecating the decision to abandon rubber control. The recommendations contained in the Brief were as follows:

"SUMMARY AND RECOMMENDATIONS

The Committee deprecates the Government decision to discontinue bulk-purchasing of Canada's requirements of natural rubber and to liquidate the Polymer stocks of natural rubber in view of the serious purchasing problems which this may present to the Canadian industry if other Governments continue to bulk-purchase their national requirements.

We respectfully point out that in the interests of national security it is imperative that Canada not only maintain an efficient synthetic rubber industry, but also that the Government maintain an adequate revolving stockpile of natural rubber in this country.

For all the above reasons, the Rubber Advisory Committee recommends, in the strongest terms, that the Government revise its

plans for the de-control of the Canadian rubber industry. As an alternative, we strongly recommend that the de-control be achieved by orderly steps and a progressive program worked out whereby under Government control the whole industry's successive steps towards de-control would be related to world supplies of natural crude rubber and to Canada's national security."

(Brief of the Rubber Association
of Canada pp. 14-15)

The Brief of the Rubber Association goes on to indicate that at the conclusion of the interview it was suggested that the industry control itself, presumably with respect to the voluntary use of a certain proportion of synthetic rubber in its products. Reference was also made, in support of the argument, to certain minutes of meetings and a letter from the Rubber Controller and Rubber Administrator and his deputies to Greig B. Smith as Secretary of the Rubber Advisory Committee which are among the documents referred to in Chapters 3 and 4 of this Part.

It may be stated at once that no objection has been taken in this Report to any post-control measures relating to control of the natural/synthetic rubber ratio or to anything reasonably related thereto. This is dealt with further in Chapter 4 of this Part.

As to the control period itself, there is no question but that the industry was intensely controlled - perhaps as intensely as any industry in Canada. It has already been pointed out that, during the control period, many of the factors that ordinarily underlie competition were in abeyance: raw materials were rationed and frequently supplied through a common channel at a common price; technical knowledge was shared at the instance of the control authorities; demand was strong in relation to supply; and ceiling prices in many cases tended, naturally, to become actual and uniform prices without any arrangement to that effect (although in many cases such uniformity was the result of uniformity in the pre-control period). It can fairly be added that the degree of control and the measures of cooperation it necessarily involved provided great temptation and opportunity to engage in other such measures that were not strictly required and to extend all such measures beyond the period when they were legitimately related to controls.

To begin with, it is not the intention to condemn any joint measure simply because it was not embodied in a formal written order. No objection is taken to any measure that was instigated by the wartime control authorities whether formally or informally and no objection is being taken to any measure that appears to have been taken by any of the parties in pursuance of the policies of the wartime control authorities or of what they thought to be such policies, whether directed informally or not directed at all.

It may be conceded immediately that, even had industry meetings not been held before the war, they must have been held during the war for the purpose of cooperating with the control authorities. The meetings during the control period related chiefly and legitimately to war problems and were, largely, in pursuance of control policies and to this extent no objection could possibly be taken to them. On the other hand, as will have been observed, in some instances and in some divisions of the industry, measures of joint action were taken during the control period that were neither motivated by considerations of public interest nor in furtherance of wartime policies.

However, it has not been necessary - if indeed it were possible - to analyze minutely all the joint actions during the hectic period of controls and sort out those which were reasonably in furtherance of wartime control policies from those which were suggested by the private interests of the parties. The conclusions which are drawn in this Part are based primarily upon findings that agreements existed which were intended to extend and did in fact extend into the post-control period in a manner unrelated to considerations of controls. In the case of vulcanized rubber clothing where the most significance is attached to events during the control period the nature of such events is unequivocal and their character of private rather than public interest not open to any reasonable doubt.

The argument to the effect that the joint measures which extended into the post-control period were entered into for purposes of orderly decontrol is an attractive one but at variance with the expressed or obvious intentions of the parties, for it is clear that the evidence which is of post-control significance does not relate to matters transitional in character but to what was intended to be the normal post-war pattern. An example of this is the revision of customer lists that took place, in certain branches of the industry, toward and after the end of the control period. Moreover, the post-war planning which took place in some branches of the industry during the control period and to which certain of the post-control measures are related refers in many instances either expressly or by implication to normal times and while there are also references to the transition period it is clear that the transitional character is not the only or indeed the prime character of the projects.

That the joint measures in effect in the fall of 1947 indicate the normal rather than a merely transitional pattern is evident from three things: first, from the circumstances surrounding the arrangements and the terms in which they are couched; second, from the fact that they are projections of pre-control practices; and third, in many cases, from the length of time they persist in the post-control period. In the case of footwear, the post-control evidence has been summarized in Section M of Chapter 3 of Part V and it indicates agreement well into 1948. In the case of heels and soles, evidence has been referred to which indicates a specific agreement on prices to shoe manufacturers in August of 1947, which was still current in January 1948, and joint action in respect of jobbers' lists as late as January 1948. In the case of mechanical goods, the evidence extends into 1949. In the case of clothing, the evidence extends well into the summer of 1947 and the effect, on this particular division, of wartime controls was perhaps the least, and the general references to price-fixing are strong and have no suggestion of any but private interest. In the case of tires and tubes, the evidence of joint action upon matters like customer classification, which can only be explained on the basis of over-all price agreement, extends into 1948. In the case of accessories, the evidence extends into October 1947. At the same time it is necessary to remember that the industry became aware of the Commission's interest in July 1947 and the evidence indicates that subsequent thereto an endeavour was made to minimize the record of evidence relating to agreements.

It is desirable to guard against leaving the impression that, excepting vulcanized rubber clothing, all joint activities during the control period were unobjectionable or reasonably founded on a desire to further wartime control policies. In some cases both the substance and the language are incompatible with such an interpretation, and it would be not only incorrect in the present instance but also unfair to persons who in the future might find themselves in similar positions to express the opinion that any such general exoneration is justified. The point is that in this case the exercise of sorting out each individual case and drawing fine lines in retrospect is as unnecessary as it would be hazardous and difficult. If the necessity arises in a future case the onus of justifying joint measures not formally prescribed will indeed be a heavy one both by reason of the fact that the issue will not then be novel and by reason of the warning publicly given in the House of Commons by the Minister of Trade and Commerce on March 6, 1951 when he said:

"I think we can get it recorded here. The government has no thought of suspending the Combines Investigation Act in the sense of proposing a measure to declare that the act will not be operative during any specified period. I assure the house that no such thing was on my mind when I answered a question in the course of a press conference yesterday. I had in mind a situation where it might be necessary in the public interest, and by reason of the defence program, to invite a number of industries to take part in arrangements which would ordinarily make them suspect under the Combines Investigation Act, and where it would be necessary to give them some assurance, limited to the particular case, that their actions would not be so construed. If and when such a situation arises it should be defined and placed on record under the provisions of the Emergency Powers Act. Any industry before entering into such an arrangement will do well to see to it that its position has been so defined because otherwise it will be amenable to all the processes of the Combines Investigation Act."

B. Control of the Market

It was argued "that a combine operating to the detriment or against the interest of the public could not exist in the face of" the competition arising from domestic sources in Canada and existing or potential from sources outside Canada (Record p. 8192). This aspect has been dealt with in the various Parts by the statistics or other information showing the major proportions of the Canadian trade for which the various companies account.

C. Mortality Among the Companies

The attention of the Commission was directed to the mortality record of rubber companies as evidence of a highly competitive industry. The following is quoted from the Brief of the Rubber Association:

"Entries and Exits

The picture of the great expansion of the Canadian rubber industry would not be complete without recording that from the small beginnings of the 1880's up to the present time, rubber company mortality has followed fairly closely the financial ups and downs of industry so that in 1948 there were approximately fifty-six establishments manufacturing and selling rubber products in Canada. A turnover of manufacturers is a natural phenomenon that develops as an industry matures in a competitive atmosphere. The Rubber Association of Canada has recently made a survey of the interests actively engaged in the rubber industry during the past twenty years and the lists and tables, attached as Schedule 'B', are of particular interest."

(Brief of the Rubber
Association of Canada, p.8)

Schedule "B" is reproduced in Appendix B of this Report, not only to elaborate the foregoing argument but also because it is an important contribution to this review of the rubber industry. Reproduced also, as Appendix C, is a related table showing the list of manufacturers of rubber goods reporting in 1948 to the Dominion Bureau of Statistics as taken from the D.B.S. publication "The Rubber Industry 1948".

D. Efficiency of the Industry

It was stated that the rubber industry had consistently followed efficient production methods, that its earnings had been relatively low and its profits, to say the least, reasonable and that these facts underlined the competitive nature of the industry. The following table was submitted in the Brief of the Rubber Association in elaboration of this point:

"Schedule Showing Ratio of Net Taxable Income to Gross Revenues of Some Canadian Manufacturing Companies as Reported in Taxation Statistics Published by The Department of National Revenue, 1948

	1945	1946	1947	1948	No. of Companies in 1948
	%	%	%	%	
Non-alcoholic beverages.	25.0	25.5	23.6	23.0	59
Alcoholic beverages	21.3	20.1	18.6	16.9	85
Rayon and silk mills ...	16.2	16.4	17.2	14.6	26
Saw mills	8.9	10.7	17.8	15.8	357
Pulp and paper mills ...	9.5	17.1	20.5	19.6	68
Cement, gypsum and plaster	16.4	19.4	17.4	18.1	74
Wire, tools and hardware	16.9	18.4	17.9	17.1	87
Office and store machines	20.9	17.2	19.9	16.4	22
Non-ferrous smelting, refining	14.2	14.5	18.6	16.2	68
Newspapers	17.9	16.5	15.2	13.1	157
Paving and petroleum products	<u>14.2</u>	<u>17.9</u>	<u>16.0</u>	<u>13.5</u>	<u>17</u>
Rubber and rubber products	<u>8.0</u>	<u>9.7</u>	<u>9.7</u>	<u>6.0</u>	<u>34</u>
Total-all profit companies	8.7	10.4	11.1	10.5	7,119

NOTE: The percentages shown above are the ratio of net taxable income to gross revenues. Gross revenues are defined as gross sales including freight and transportation charges but after deducting discounts allowed, sales tax and sales rebates and refunds. To this figure has been added investment and miscellaneous income and discounts earned on purchases. Companies which do not report a profit are not included."

(Brief of the Rubber
Association of Canada pp.8-9)

It is not stated in this Report that any of the Companies were inefficient or that their earnings or profits were exorbitant. It may in some cases be desirable to arrive at an opinion upon those factors for the purposes of a particular report. Such factors do not however underlie the question whether a combine exists within the meaning of the Act. The Act as passed by Parliament and interpreted by the courts is directed against courses of action having certain tendencies rather than the results in particular cases. One such forbidden course of action is an agreement having or designed to have the effect of preventing or lessening competition over a substantial area of the trade or business concerned. In other words, the public is entitled to have prices and other conditions of sale, profits and other emoluments, regulated by the free action of a competitive market, rather than in the discretion, no matter how reasonably exercised, of the suppliers. Once the determinant of competition has been abandoned, the difficulties of setting standards of reasonableness are obvious. Reasonableness is a relative thing. A judgment that

particular prices were reasonable would have to have regard to what they would or might be in the absence of the arrangement complained of; or to an examination, independently or in comparison with other industries, of the efficiency and returns of the industry under review. The first alternative could only involve the investigator in speculation because no one could say what conditions would have existed under a different regime. The second alternative, to be fair and complete would involve the establishing of ratios between the prices in question and all the other factors in relation to which their reasonableness would have to be measured: dividends, reserves, executives' salaries, even wages. In short, the second alternative would be of the character of regulation of the industry. For these reasons the invitation to consider and base conclusions upon such factors as those above mentioned has always been declined.

E. Effect of Strong Demand and Short Supply

Stress was laid upon the fact that during such a period as existed during price controls, when demand in relation to supply was strong and ceiling prices were set with a view to keeping down living costs, it was inevitable that ceiling prices tended to become going prices. Reference was made to evidence given before the Special Committee of the House of Commons on prices in 1948 by the then Chairman of the Wartime Prices and Trade Board:

"... In practice, of course, the fixed maximum price becomes the going price and makes the mark-up the prevailing mark-up. There are many cases of goods being sold below the ceiling but substantially the ceilings were so set that it was unlikely there would be any large volume of sales at prices below the ceiling price. I qualify that again on certain agricultural products where we had a flat ceiling price throughout the year, as in the case of eggs. At times eggs were away below the ceiling price and then would come up to ceiling, but broadly speaking the ceiling price tends to become the going price."

(Record p. 8216)

and to the evidence of J. A. Martin before this Commission in 1949:

"... The maximum prices, to a very large extent I would say, became fixed prices. Almost a must."

(Evidence p. 7975)

and again:

"(If anyone attempted to sell below the ceiling) ... he was simply losing more money, or losing money, and if he was under a subsidy, as the rubber people were on rubber and various kinds of rayon, cotton, if he was under a subsidy and he started to cut his price where he would be below the standard profit, certainly in that case none of the subsidy would be repaid to the Commodity Prices Stabilization Corporation and the government would not get any excess profits. He would be just taking

it out of the pockets of the profits."

(Record pp. 8220-21)

The argument then proceeded in this manner:

". . . It is quite clear from the evidence of Mr. Martin and Mr. Taylor that it was intended they should be fixed prices. After all, let us be practical. Why should anybody sell for less? They could not take more business. There was a product scarcity, that is, there was more demand than there was supply, and once the price is fixed what economic reason is there for selling below? You do not do it because of a combine. You do it because it is the only economic course that is possible."

(Record p. 8222)

There is no reason to doubt that in many or most cases in the rubber industry, ceiling prices for the reasons given, did tend to become the going prices. No criticism is levelled against any party for charging, independently, the ceiling price. Where, however, the ceiling price was maintained, as in some cases it was, by agreement among the parties rather than by the economic "must" referred to by Mr. Martin, the explanation for such prices does not lie in the direction indicated.

Chapter 3 - Proposals to Discuss Industry Arrangements with the Combines Investigation Commission

In the course of the final argument before the Commissioner, attention was strongly directed to the fact that at various industry meetings a proposal had been discussed to consult the then Commissioner and to seek his advice upon the plans of certain divisions. It was submitted that the reason for non-implementation of this proposal had been the commencement of this investigation. It was also submitted that the proposal was significant in two ways: first that certain of the plans were contingent on the Commissioner's approval and second that the proposal was proof of innocent intent. It seems desirable to set out at length the relevant extracts from the documents.

At a meeting of the presidents and general managers of the foot-wear companies held on February 27, 1947 W. H. Miner, the President of Miner "expressed the emphatic opinion that the industry must work together in the future as it had during and because of Rubber Control, if the losses prevalent in the pre-war period were to be avoided. This raised a question of to what extent the industry could work together without falling foul of the Combines Investigation Act, and he suggested that the industry appoint a committee to interview Mr. F. A. MacGregor, the Commissioner of the Combines Investigation Branch in his connection, a step which has been taken by other industries." After some discussion a resolution was passed to the effect that: "RECOMMENDED that the Sales Managers discuss and consider the question of submitting their completed merchandising plan for 1947 to Mr. F. A. MacGregor, Combines Investigation Commissioner, for examination, bearing in mind Mr. J. A. Martin as possibly the best channel of approach to Mr. MacGregor." (Exhibit 776).

On March 6, 1947 the sales managers met and the matters dealt with included a review of the minutes of the last-mentioned meeting:

" . . .

Discussion centred first on the problem of contact with the Combines Investigation Branch. In this connection, Mr. Minister expressed the opinion that it would be inadvisable to try to arrange to have a representative of the Branch sit in on industry meetings. Mr. Ross was strongly of the opinion that it would, however, be most desirable to find out, preferably through some third party, who should possibly be Mr. J. A. Martin, exactly what methods and degree of co-operation within the industry are permissible under the Combines Act. In this connection, he felt it could and should be pointed out that the industry's program for co-operation is constructive as it will keep costs down and so permit the industry to make reasonable profits without penalizing the consumer through high prices. He suggested that it could be assumed that the Government wants industry to make profits so that it may continue to provide revenue to the Government from corporation taxes.

The meeting generally concurred with the views outlined above, but came to the conclusion that an approach to the Combines Investigation

Branch should be postponed until it is known definitely whether Mr. Martin is agreeable to acting in a similar capacity for the Footwear Group, as he has already agreed to act for the Tire and Mechanical Goods Groups. When it is known that Mr. Martin has consented to work with the Footwear Group, the subject of approaching Mr. F. A. MacGregor on behalf of the Group would be taken up with him.

..."

(Exhibit 775)

The references to J. A. Martin have to do with a proposal for engaging Mr. Martin, who would soon be relinquishing his duties as Rubber Controller and Rubber Administrator, to act after the lifting of controls in a private advisory capacity in respect of certain divisions of the rubber industry.

The same matter was discussed on March 21 at a meeting of general managers of the tire companies:

"..."

Mr. Sawin raised the point that when this idea had first been discussed by Tire General Managers, it had been on the basis that Mr. Martin would continue to operate an unofficial Production or Specification Control. On the other hand, Footwear General Managers had envisaged Mr. Martin assuming broader responsibilities, and possibly for example, acting as a liaison between the footwear industry and the Combines Investigation branch to ascertain the degree of industry co-operation permissible under the Combines Investigation Act. He suggested that Mr. Martin might also be asked to act in a similar broad capacity for the tire industry.

..."

(Exhibit 2213)

Mr. Sawin undertook to sound out Mr. Martin as to whether he would undertake such employment (Exhibit 2213).

The proposal to employ Mr. Martin was further discussed at a meeting of the directors of the Rubber Association held on March 31, 1947 when it was stated that:

"..."

... the Directors of the Rubber Association would like to have Mr. Martin continue to help the industry to operate on a sound basis after March 31st, as an employee of the Association. It was indicated to Mr. Martin that the Tire, Mechanical Goods, and Footwear groups and the Drug Sundry Group (subject to concurrence of Viceroys) all desired him to control specifications and would abide by his decisions. In addition, it was suggested to Mr. Martin that various groups in the industry would like to have him approach Mr. MacGregor, the Combines Act Commissioner on their behalf, to ascertain what type and degree of industry co-operation is permissible under the Combines Act.

Mr. Martin indicated that he would be willing to act in the capacity suggested, with assistance from Technical Committees appointed

by him from the groups concerned. It was further agreed that in addition to Technical Committees, Mr. Martin should be assisted by an over-all Advisory Committee consisting of the Presidents or General Managers of all companies.

.. ."

(Exhibit 781)

On June 5, 1947 at a meeting of the sales managers of the footwear companies the matter came up again:

".. ."

COMBINES INVESTIGATION ACT: Mr. Minister suggested that it would be very desirable for Mr. Martin to have an informal discussion with Mr. McGregor, the Commissioner of Combines, in the very near future to ascertain exactly the type of industry co-operation which is deemed permissible under the Act. The meeting concurred and it was agreed that Messrs. Minister and Pequegnat should interview Mr. Martin and brief him on the footwear industry's program.

.. ."

(Exhibit 928)

The minutes of a meeting of the sales managers of the footwear companies held on July 3, 1947 contain the following item:

"COMBINES INVESTIGATION ACT: Mr. Kilian reported that Messrs. Minister and Pequegnat would interview Mr. Martin on this subject, as soon as Mr. Pequegnat returns to Kitchener."

(Exhibit 927)

On July 4, 1947 A. J. Minister, General Manager, Footwear Sales Division of Goodrich wrote to J. A. Martin to inquire whether he would attend the Rubber Footwear Group meeting to be held in Kitchener on August 7 and 8. Mr. Martin's reply stated he would be there on the 7th but not the 8th and asked whether there was anything particular that Mr. Minister would like him to discuss. On July 24, 1947 Mr. Minister replied to Mr. Martin asking him to discuss "our footwear co-operation as it relates to the Combines Investigation Act" with Mr. Pequegnat and Mr. Minister prior to the meeting itself so that "we would be in a position to bring in a report to the group at the first day's meeting, which convenes at 1:30 in the afternoon" (Exhibit 794A).

On July 9, 1947 the Commissioner of the Combines Investigation Act wrote letters to certain of the rubber companies requesting information related to the pricing of rubber products and this letter attracted considerable attention throughout the rubber industry. Then, beginning in September, officers of the Combines Investigation Commission visited the offices of the rubber companies. The proposal to consult with the Combines Investigation Commission whether for these or for other reasons was not pursued.

The minutes of a meeting of sales managers of the footwear companies held January 8, 1948 contain the following item:

"The recent visits of representatives of Mr. F. A. McGregor's office to Rubber Footwear Plants came up for discussion. In view of the fact that the joint effort of the Industry has been to eliminate wasteful practices in production and distribution with a resultant favorable effect on price levels, it was the general conviction that Industry meetings should be continued."

(Exhibit 765)

As stated at the beginning of this Chapter, the foregoing discussions were pointed to as indication that the rubber companies intended no breach of the law and as indication that certain measures discussed by the Companies were tentative and subject to an expression of approval from the Combines Investigation Commission. The measures objected to in this Report extended beyond the merely tentative. It is possible however, that had this investigation not intervened, the rubber footwear companies would have carried out the proposal to consult the Commission and would have come, in the light of the advice they received, to put their house in order vis-a-vis the Combines Investigation Act. This must remain in the realm of speculation.

Chapter 4 - Polymer Corporation Limited

It was also argued in defence of the parties charged that they had necessarily been drawn into certain cooperative arrangements by measures taken by them in the public interest and at the instance of Polymer to regulate the use of crude rubber and ensure the use of a sufficient quantity of synthetic rubber to keep Polymer in operation after decontrol. It will be remembered that Polymer was the Crown company set up early in the war to produce synthetic rubber and that its contribution plus the cooperation of the industry in pooling their experience in working the new product had done much to ameliorate the rubber shortage resulting from the scarcity of crude. When rubber control ceased at the beginning of April 1947 crude rubber was still in short supply and J. A. Martin, who was then relinquishing his position as Rubber Controller and Rubber Administrator, was engaged by the Rubber Association, and one of his functions was to regulate the proportions of crude and synthetic rubber used by the industry, by means of industry rubber orders to which the industry gave voluntary compliance. Then, as crude rubber became more plentiful and less expensive, there arose a question as to whether the industry would continue to use sufficient synthetic to permit Polymer to operate efficiently. The nature and background of these post-control arrangements appear from the following documents.

In a letter of March 25, 1947 to Greig B. Smith as Secretary of the Rubber Advisory Committee, the Rubber Controller and Rubber Administrator and his deputies pointed out that government control over the purchasing and importing of natural rubber had ended on November 14, 1946 and stated that government control over the use of crude rubber would end on March 31, 1947. The letter continued:

" . . .

While there will be no Government control of the usage, we warn industry to be very careful for some time yet. Before increasing the poundage of crude rubber or natural latex used at present in any article, as allowed by current R.C. orders, serious thought should be given to the general supply situation.

. . .

If any individual or company starts to use natural rubber or natural latex without consideration of the above facts, a very bad situation may be created both as to supply and price, damaging to the industry as a whole and eventually to the individual starting the trouble. . . .

If industry will show the same spirit of cooperation and foresight as exhibited during the war and the period of acute shortages since the war, this problem will not be too difficult. This is the thought we would leave with you at the end of Government Rubber Control.

. . .

Export Control

Steps are being taken to discontinue export control on rubber and rubber products. Until the Department of Trade and Commerce notify you, it will be necessary for you to apply for Export Permits as at present.

. . ."

(Exhibit 782)

The minutes of a meeting of the directors of the Rubber Association held on March 31, 1947 contain the following:

". . .

Export Control will be handled by the Department of Trade and Commerce, but in view of the fact that all rubber products seem to be in reasonably good supply, Mr. Martin has recommended that control be taken off exports of all rubber and rubber products immediately. He expects an announcement to this effect to be issued by the Department of Trade and Commerce in a few days.

. . ."

(Exhibit 781)

J. A. Martin, the Rubber Controller and Rubber Administrator distributed at this meeting a memorandum which indicated the continuing shortage of natural rubber and concluded with the observation that: "In view of the present position, as shown above, and the uncertainty of Eastern production and shipping, it would seem advisable to go slowly and carefully for some months" (Exhibit 781). The directors expressed a desire to have Mr. Martin enter the employ of the Rubber Association for the purpose, among others, of controlling rubber specifications to which proposal Mr. Martin acceded and he requested "that a letter be sent to all companies of the Tire, Mechanical Goods, Footwear and Drug Sundries Groups requesting them to hold the present specifications until the Technical Committees concerned decide that changes are desirable" (Exhibit 781).

A meeting of the general managers of companies making tires, tubes and tire repair materials, footwear, mechanical goods and drug sundries was held on April 22, 1947 at the request of Mr. Martin who reported upon the natural rubber situation and suggested the possibility of working "to a 55% crude ratio by July 1st and a 66% ratio by November 1st, 1947" (Exhibit 2210). The importance of the use of crude in competing with the U.S. in export trade was discussed:

". . .

It became apparent that many of those present felt that the tentative date for attainment of a 66% crude usage position (November 1st) was set unnecessarily far ahead in view of the fact that crude is being offered to Canadian companies quite freely. In this connection, Mr. Martin expressed the opinion that with U. S. manufacturers now free to buy for themselves, considerably stiffer competition in rubber buying might be expected. However, the majority

of the meeting were of the opinion that if Canadian companies placed orders immediately, sufficient crude could be obtained to warrant going to 66% crude by September 1st. It was, therefore, finally agreed that an effort should be made to reach a 66% crude basis by September 1st and that rubber companies should buy accordingly.

. . ."

(Exhibit 2210)

The presidents and general managers met again on May 26, 1947:

". . .

VOLUNTARY RUBBER CONTROL: The Chairman opened the meeting by referring to the letter addressed to the Secretary on May 20th by Mr. J. I. Simpson which (1) expressed the view that the recent sharp drop in crude rubber prices indicated that supplies were more plentiful than had been anticipated, (2) stated that it was possible to secure various grades of crude at a lower price than Polymer were charging for GR-S and (3) suggested that a meeting be held to discuss the advisability of discontinuing the voluntary industry rubber control.

Mr. Simpson stated that since his letter was written he had been informed that effective June 1st, the Polymer Corporation proposed to lower the price of GR-S to $16\frac{1}{2}$ cents per pound f.o.b. Sarnia, with a further reduction to 16 cents if industry consumption totals 3,500,000 pounds per month, and to $15\frac{1}{2}$ cents if consumption totals 4,000,000 pounds per month. Several of those present confirmed that they had also received this information and Mr. Simpson indicated that it altered his views considerably.

. . ."

(Exhibit 2207)

Mr. Martin then reviewed the world rubber situation which indicated that the "price of Crude dropped in 6 weeks from $20-1\frac{1}{4}$ F.O.B. Singapore to $15-3\frac{1}{4}$ - #1 R.S.S." and expressed the opinion that the present somewhat favourable supply and price picture might soon be reversed and the minutes continue:

". . .

"I think we can expect very erratic market conditions. The rush to produce Natural rubber and turn this into dollars alone, will create uncertain and changeable conditions. The current high rate of production of finished goods is also an unsettling factor.

It would seem to me that we should move very carefully at present. Probably after the International Rubber Study Group meets in Paris July 2 - 10th, 1947 we will have a clearer picture. If we throw out all control at present, Polymer would soon be forced to discontinue production. We need this production to carry us through a period that may yet be difficult both as to price and supply'.

At the conclusion of Mr. Martin's notes, Mr. Simpson (Dunlop) said that the price situation was the main factor which had caused him to ask for the meeting, as he could see no reason why the Canadian rubber industry should subsidize the Polymer Corporation.

Mr. Belton (Gutta Percha) expressed the view that complete removal of control over the use of crude rubber in Canada would probably lead to all companies being forced to make 100% crude rubber products and he did not think the industry was in a position to face this immediately. He was in favour of retaining the voluntary control, although the rate of conversion from synthetic to crude might be accelerated.

Mr. Funston (Firestone) felt that in view of unsettled world conditions, it would be wise to go slowly and cautiously in converting from synthetic to crude and that the industry should therefore be prepared to continue to consume a reasonable quantity of synthetic for some time to come.

Reverting to the price of GR-S, the meeting agreed that the Polymer Corporation should be requested to lower the price unconditionally to 16 cents per pound f.o.b. Sarnia. In addition it should be requested to rebate 1/2 cent per pound (to give a net price of 15½ cents) provided total industry consumption keeps up to the 4 million lb. per month rate. In either case, the arrangement should be effective as of June 1st.

Mr. Martin was requested and undertook to take this matter up with the Polymer Corporation immediately, and on the assumption that satisfactory price arrangements will be made with Polymer, the meeting agreed that the industry's voluntary rubber control should continue to function until further notice."

(Exhibit 2207)

On June 4, 1947 the directors of the Rubber Association met with officials of Polymer Corporation to discuss synthetic rubber prices. J. R. Nicholson of Polymer stated that on receiving Mr. Martin's letter regarding the price of GR-S the Polymer Corporation found itself in a quandary because the cost and therefore the price of GR-S depends on the volume of production. The minutes continue as follows:

". . .

Mr. Ambridge (of Polymer) said he was sure all concerned desired to find a sound solution to the problem of synthetic rubber prices. He had discussed the situation with U.S. rubber processors and all of them regard the synthetic rubber industry as insurance against 'Stevenson' plans and unduly high natural rubber prices. He felt, however, that the cost of this insurance must be handled in a manner which is fair to the rubber industry on the one hand and to the Canadian

tax-payer on the other. He expressed the opinion that the rubber industry would not expect synthetic rubber prices to fluctuate up and down with the short-term fluctuations of crude rubber prices. Concluding these remarks, he stated that before he started to talk prices, he wanted an assurance that the industry intends to continue its voluntary specification control.

Mr. Carmichael (Of Polymer) spoke next, saying that maintenance of the Polymer Corporation was a 'must' in the economic interests of Canada. Tremendous expenditures are being undertaken on oil and chemical industries being built around it, and when completed these will benefit the rubber industry. But it will be 18 months before these plans mature. He appealed to the rubber industry to help Polymer keep its head above water during this period as a patriotic duty, and as a contribution towards the preservation of the private enterprise system in Canada. He desired to know what volume of consumption in Canada Polymer may count on during the next 18 months and explained that at the expiry of that period, synthetic rubber will be a less important factor in Polymer operations because of the new developments under way."

(Brief of The Rubber Association
of Canada pp.39-40)

Mr. Martin, in reply, stated that a year ago it was estimated that with crude at 25¢ per pound GR-S was worth about 20¢ per pound and this estimate was generally accepted. When crude dropped to 22½¢, then 18½¢ GR-S still seemed to be in a reasonable price relationship. Now with crude at about 16¢ he inquired tentatively if 14¢ would be a reasonable price for GR-S. The fact that Canadian manufacturers dare not use a lesser proportion of crude than United States manufacturers and must compete in export markets with British manufacturers using 100% crude was referred to. Mr. Ambridge then proposed that Polymer be given assurance that the voluntary specification control would be continued and asked what volume of synthetic consumption in Canada might be anticipated. A.G. Partridge of Goodyear replied that the industry had agreed to continue specification control subject to a satisfactory reduction in the price of GR-S. Mr. Ambridge asked why synthetic rubber was considered to be worth less than crude. In reply Mr. Martin pointed out that it required more than one pound of synthetic, about 10 per cent more, to replace one pound of crude. J. R. Nicholson stated that the prices Polymer proposed were the lowest they could offer without going into the red. He expressed the opinion that they could keep the price down to 16½¢ per pound on a volume of 15,000 tons Canadian consumption. To this Mr. Martin answered that the industry could get suitable crude at an average price of about 15¢ per pound c.i.f. Montreal. To purchase GR-S at 16¢ per pound would cost the industry about \$40,000 per month. In addition butyl would cost about \$26,000 per month, a total of \$66,000 per month. After some further discussion it was resolved that the Canadian rubber industry would accept, until further notice, prices offered by the Polymer Corporation effective June 1, 1947 as follows:

"GR-S

On purchases of less than 3,500,000 lbs. per month - 16 $\frac{1}{2}$ cents
per lb. f.o.b. Sarnia.
On purchases of more than 3,500,000 lbs. but less - 16 cents per
than 4,000,000 lbs. per month lb. f.o.b. Sarnia.
On purchases of 4,000,000 lbs. per month or over - 15 $\frac{1}{2}$ cents per
(quantities refer to total lb. f.o.b. Sarnia.
industry purchases)

BUTYL - 18 $\frac{1}{2}$ cents per lb. f.o.b. Sarnia.

It was further agreed that the quantity price reductions on
GR-S should take the form of a rebate at the end of each month.

The Secretary was instructed to advise all Association firm
members of the outcome of the meeting."

(Brief of the Rubber
Association of Canada p. 41.)

The general managers of the tire companies met again on July 25,
1947. They received a report on the performance of butyl in tubes; the
recommendation of the Tire Technical Committee as to its continued use; and
advice from Polymer of a price reduction to 17¢ per pound f.o.b. Sarnia,
effective August 1 to September 30.

". . .

On a motion by Mr. Partridge, seconded by Mr. Funston and carried
unanimously it was agreed that the tire industry shall continue to
use butyl for tubes until further notice.

However, it was suggested that Polymer Corporation be advised
that the industry was of the opinion that the price reduction should
be made effective immediately.

". . ."

(Exhibit 2205)

The proportion of crude to be used in tires was discussed and -

". . .

Mr. Brown then made a motion to the effect that the General
Managers would view with approval a recommendation from the Tire
Technical Committee to convert 7.00 and 7.50 truck tires of 8 or
more plies to 94% crude, with immediate effect.

This motion led to considerable discussion in which the effect
on the operations of the Polymer Corporation of a too rapid and far-
reaching conversion to crude in tires was stressed, as a result of

which Mr. Brown withdrew this motion and substituted the following, which was seconded by Mr. Berkinshaw and carried unanimously.

RESOLVED that the General Managers request the Tire Technical Committee to submit a long-term step-by-step program of conversion to crude in tire casings, without setting specific dates for the successive steps.

.. ."

(Exhibit 2205)

At a meeting of sales managers of Canadian rubber footwear manufacturers held on August 7 and 8, 1947 the Chairman referred to the handicaps in meeting competition that were involved by the industries self-imposed undertaking to use crude and synthetic rubbers in the ratios of 2 to 1 and he asked Mr. Martin to review the situation to decide what steps might be taken to relieve the footwear industry of this handicap. Mr. Martin pointed out that the Canadian rubber industry as a whole believed that the Polymer Corporation should be kept in operation as an important factor in the national security and as a stabilizer of crude rubber prices and he felt that the rubber footwear industry was under some obligation to accept reasonable restrictions on the use of crude in order to keep Canadian consumption of GR-S at a figure which would enable the Polymer Corporation to continue to manufacture it. After some discussion it was finally agreed that the footwear industry should work on the basis of using a maximum of 66-2/3 crude and a minimum of 33-1/3 per cent synthetic for all waterproof lines and all standard canvas lines and that crepe soles, which could not be made under the regime of the 2 to 1 ratio should not be used except on domestic canvas specialties and on certain specified canvas lines for export on which there should be no rubber ratio limitations (Exhibit 453).

It is apparent from the foregoing that in addition to considerations of public benefit, the rubber companies had a real personal interest in the continuance of Polymer from the standpoint of emergency supply and control upon the price of crude. Obviously no objection could or should be taken to these discussions and arrangements relating to Polymer but on the other hand no case has been made out to the effect that these arrangements involved any of the other arrangements to which objection is taken in this Report.

Chapter 5 - Summary and Conclusions

A. General

When this investigation commenced, almost all the large manufacturers in Canada of rubber products were members of the Rubber Association of Canada. All the Companies which are reported against in this Report, except one, were such members. The Association is a non-profit-making organization incorporated in 1920 under the Dominion Companies Act. The officers and directors are officers and officials of the rubber manufacturing companies, except that the secretary and manager is a full-time paid employee as is also his assistant. The Association is supported financially by entrance fees, annual dues and voluntary levies based upon the amounts of rubber used by the Companies. The officers and directors, at the time this investigation commenced, met three or four times each year.

The stated objects of the Association are to promote the commercial interests of the members, to secure the advantages to be obtained by mutual cooperation, to acquire and disseminate information concerning trade conditions at home and abroad, to stimulate social intercourse among those connected with the rubber industry and commerce, and in general the promotion and welfare of the rubber industry.

The matters discussed by the directors are normally matters of general interest to the industry such as tariffs, taxes and the supply and use of synthetic rubber, and the directors as such are not concerned with production or merchandising policies or terms of sale.

The rubber companies with whom this Report deals are grouped into six Divisions or Groups in accordance with the products they manufacture, and one company may, of course, belong to different Groups. These Divisions or Groups are the Mechanical Group, which manufactures such mechanical rubber goods as belting, packing and hose; the Tire Group, which manufactures automobile and other tires and tubes; the Footwear Group, which manufactures waterproof and canvas footwear; the Clothing Group, which manufactures rainproof clothing; the Heels and Soles Group, which manufactures heels and soles; and the Accessory Group, which manufactures various automotive accessories such as fan belts, radiator hose and tire repair materials. Full descriptions of the lines manufactured in each Group will be found in the Parts of this Report dealing with the respective Groups.

These Divisions or Groups are groups of the industry rather than of the Association although they are often referred to, except in the case of the Mechanical Group, as Divisions of the Association. Their relation to the Association is that the secretary and manager of the Association or his assistant from time to time acted as secretary and secretariat for each of the Tire Group, the Footwear Group, the Clothing Group, the Heels and Soles Group and the Accessory Group, but not the Mechanical Group. While the degree of services so rendered by the secretary and his assistant varied from Group to Group, it was the general pattern that they attended to the recording and dissemination of minutes and sometimes agenda and acted as a clearing house between meetings. Their duties were clerical rather than administrative and they had no responsibility for the initiation or working out of the measures of joint action to be referred to. In the case of the Mechanical Group the secretary and his assistant performed no such services and the secretarial

work was performed entirely within the Group itself. Whether or not the services rendered to the different Groups by these paid officials were within the contemplation of the constitution of the Association, there is no doubt that they were rendered with the knowledge and at least the tacit approval of the directors.

The main purpose of each of these Groups, except during the control period, was the formulation of common merchandising policies including the fixing and maintaining of common prices over the whole or a substantial part of the field of their respective operations. During the control period ceiling prices were fixed, consumption of rubber by the Companies was rationed, distribution of the finished product was regulated, "know-how" was frequently shared and demand was strong in relation to supply so that most of the bases of real competitive action were removed. During this period also, cooperation rather than competition was stressed by public authority; and, generally speaking, the meetings and dealings among the Companies in the different Groups were concerned with wartime problems and cooperation with the control authorities. At the same time, by force of circumstances sometimes supported by agreement, the common pricing structures which existed prior to controls were revised or kept intact. Not all of the joint measures taken during controls can be attributed to control policies but no attempt has been made in this Report to perform the impossible task of assigning a character of public or private interest to each of the joint measures that were taken during this period. No objection, of course, is taken to any action in pursuance of a control directive whether formal or informal; and indeed no objection is taken to actions in furtherance of wartime control policies, whether or not covered by a formal or informal directive. The conclusions to be indicated in the succeeding paragraphs are generally based upon findings that the Companies, most of whom went into the control period under price fixing arrangements, were, after the control period and at the time of this inquiry, parties to arrangements which were intended as the normal patterns of the industries and did not owe their origins to wartime controls.

It is desirable, in order to prevent any possibility of misunderstanding, to point out that the Rubber Association of Canada has many legitimate functions to which no objections can be taken. These functions include cooperation with various Government agencies not only during controls but also in normal times. The cooperation extended by the Association and the industry to the Government especially during the control period is noteworthy and is mentioned elsewhere in this Report.

The plan followed in describing the activities of the Companies in Parts II to VII inclusive has generally been to let the documents, as far as possible, tell the story themselves. The oral evidence has been dealt with, as convenience or organization dictated, either in relation to specific documents or separately in more general terms. The oral evidence taken from officers and officials of the Companies ran into approximately 8000 pages and the documents taken from their files and consisting mostly of minutes of meetings and correspondence ran into approximately 4000. Generally speaking, the authenticity of the documents was not questioned, but in many cases, and particularly when some years had intervened between the date thereof and the hearings, the witnesses were unable to assist in their interpretation. In other cases the recollection of the witnesses indicated an interpretation at

variance with the literal meaning. For example, it was frequently stated that what was expressed as agreement was not understood to be so by the parties; that it was only an exchange of information or an announcement of one company's policy; and it was at times stated that the person recording the matter had erred in his selection of words. It was also stressed that no penalties were attached to infractions of the reported agreements; and it was stated that apparent agreements had not been adhered to.

Had these differences of interpretation related to isolated documents, it might have been very difficult to resolve the conflicts raised between such interpretations and the documents themselves. Having regard, however, to the extensive patterns established, the reiteration of expressions indicative of agreement, and the seriousness with which the reported understandings were obviously regarded, it has been fairly easy to arrive at a conclusion that in the great majority of cases the document itself is the surest indication of what was intended. The authority of the minutes as the best evidence of all the business that was transacted at Group meetings during the latter part of the period covered by this Report is vitiated however by the fact that the minutes of all Groups, save the Mechanical Group, were reviewed in the summer of 1947 by the secretary and manager of the Association and his assistant for the purpose of deleting references to price fixing and other agreements. This is fully described in Chapter 4 of Part I, Chapter 2 of Part IV and Chapter 3 of Part V. Finally, the absence of penalty or other sanction is not a deciding factor.

It was stressed in the course of the hearings that prices had been reasonable and profits not excessive and that in some cases the Companies had been losing money. The establishing of criteria for measuring the reasonableness of prices and profits, even if possible, is not germane to the present inquiry. The Combines Investigation Act confers no authority to regulate business by setting up standards of reasonableness of prices or financial returns either before or after they are obtained. If reasonableness of prices were the cardinal test, then the question of reasonableness would have to be determined on the basis of some acceptable relationship between prices on the one hand and the other relevant business factors on the other hand. Obviously these other factors would include primarily wages, dividends, reserves and executive salaries. In other words, an invitation to pass upon the reasonableness of prices is an invitation to regulate. The policy of the Act is to eschew such regulation and to assert that prices shall be determined by competition and not by arrangement among the parties.

In respect of one of the Groups, particularly, attention was directed to the intention expressed in the documents, of consulting the Combines Investigation Commission, as evidence of innocent intent, and on behalf of all Groups, it was emphasized that certain cooperative measures were by way of regulation of the consumption of crude rubber in the public interest after it had been released from controls but was still in short supply, and by way of assistance to Polymer Corporation. These matters are dealt with at length in Chapters 3 and 4 of this Part. The submission that certain measures of joint action were justified by wartime controls is dealt with in Chapter 2.

B. Detriment to the Public

The Combines Investigation Act forbids a combination by way of actual or tacit contract, agreement or arrangement which has or is designed to have the effect of fixing a common price or preventing or lessening competition in a commodity or otherwise restraining or injuring trade or commerce, where such combination has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others. The judgments of the Courts in cases decided under this Act and under somewhat corresponding provisions in the Criminal Code may be looked to for guidance upon the principles to be applied in determining whether a given situation is a combine within the meaning of the Act. Such cases indicate that the legislation was passed for the protection of the public interest in free competition; that prices are to be regulated by competition rather than by private arrangements among suppliers; that the question whether an arrangement prevents or lessens competition to a degree that is detrimental to the public is one of fact depending upon the particular case; and that the object of an arrangement and not whether it was completely effective in eliminating competition is the governing factor. Having regard to the importance of the Companies in the various divisions of the rubber industry, as disclosed in Parts II to VII of this Report, there is no room for reasonable doubt that the preventing or lessening of competition which was the object and, to a varying but always substantial degree, the effect of the arrangements, was of an extent to be detrimental to the public. The results to the public, as regards prices and other values, were obviously likely to have been different and more advantageous had these Companies been actively competing among themselves. In other words, in each of the six Divisions, the Companies did not represent merely a small segment of the trade which had no significant effect upon prices, production and the other factors which concerned their customers. On the contrary they exerted, at the least a very substantial influence upon prices and at the most they dominated them. This does not mean, of course, that they could be as arbitrary as they chose but it does mean that there was a substantial area over which prices and other factors would be different and less advantageous to the public when the Companies collaborated than when they competed.

There is another aspect of the arrangements making for detriment. Except in the case of mechanical rubber goods, footwear back in the 1930's and, perhaps, vulcanized rubber clothing, it would not be correct to believe that the arrangements entered into among the Companies in the different Groups controlled prices at all times in a highly effective fashion or eliminated competition in a thorough-going manner, although these were patently their design and they achieved a substantial measure of success. Distrust, however, was common and deviations from the industry arrangements were frequent and this distrust and these deviations kept a considerable degree of price competition alive. But it was not the frank and open competition that achieves the effects expected of competition in Canadian industry. Notwithstanding the fact that agreements were frequently not lived up to, some of the Companies obviously went on year after year deluding themselves that a more satisfactory degree of adherence to the agreements could yet be obtained and that the industry could find stability and profit on the basis of industry organization and private control. It is impossible, of course, to say what would now be the situation in the different divisions of the industry had each of the

Companies accepted the necessity for independent action and formulated its own policies. It seems fairly obvious, however, that both the public and the Companies themselves suffered from the attempts to find security through agreement and from the sometimes wishful thinking in this direction that the evidence frequently disclosed.

Even if one were to concede a much lower degree of effectiveness than the agreements actually had, it would remain true that the Companies never faced the fact that they must act independently and the public never obtained the results of thorough-going competition.

Another detrimental aspect of the arrangements is related to tariffs. There is substantial tariff protection on most of the products with which the arrangements are concerned. It was of particular significance in respect of certain mechanical rubber goods and tires and tubes. Now when domestic manufacturers are competing behind a tariff barrier, the tariff is serving its intended purpose of protecting the domestic industry against prices from without the country which the domestic industry, in spite of reasonable efficiency, cannot meet or better; and by force of such domestic competition the cost to the consuming public of the tariff protection is minimized. But when domestic prices are set, behind the tariff barrier, by arrangement, then the safeguard provided by competition is absent; the common price tends to be the largest price which the tariff will permit; the cost of the tariff protection to the consuming public is maximized; and, if it is not true that the tariff protection is higher than is actually necessary to protect the domestic industry, the Companies privy to the arrangement have at least given the consuming public strong reason to believe that such is the case.

Finally, there developed out of the joint arrangements certain discount structures which could not have existed had each company followed an independent pricing policy. The outstanding example of this is the classified accounts system which was followed in the footwear industry. Under this system the discount and, therefore, the net price afforded a customer depended upon the extent of his cumulative purchases from the entire Group. A larger discount and a more favourable net price were not necessarily related to economies in production or distribution. Once a customer attained, through combined purchases, a comparatively high discount rating, he received better treatment from any supplier than did another customer whose purchases from such supplier were greater but whose combined purchases placed him in a lower discount category. No system so formalized existed in any other branch of the industry, but the same underlying principle was to some extent present in those other situations where buying status depended on joint recognition; for example, in the case of some mechanical goods where, once a customer had attained a particular listing, he was entitled to the same favourable price from any manufacturer, regardless, generally speaking, of the amount of the individual order or of the extent of total purchases from that manufacturer.

The particular conclusions may now be stated in respect of each Group separately.

C. The Mechanical Group

For many years prior to World War II and thereafter during 1947 and 1948 and into 1949 the leading manufacturers in Canada of mechanical rubber goods were parties to thorough going and effective agreements which included common prices, uniform treatment of customers in such ancillary matters as shipping charges and credit terms and some restrictions, incidental to pricing, upon product specifications. The manufacturers referred to produced about 90 per cent of all the mechanical rubber goods manufactured in Canada in 1948 although the arrangements did not extend to this proportion of all their products. The arrangements are described in a memorandum prepared by an official of one of the Companies in the fall of 1947 in the following terms which are substantially correct:

". . .

Companies regularly represented in group meetings are: Goodyear, Dominion, Gutta Percha and Dunlop, with the addition of Goodrich where fire hose is involved and the further addition of Goodrich, Barringham, Firestone, Griffiths and Viceroy where all-rubber garden hose is concerned. Meetings of some or all of the above group have been held from time to time for the past thirty years or so and minutes of these meetings have been distributed to those concerned. In addition to the minutes, 'work sheets' identical in form are kept by each of the first five companies above-mentioned on which are recorded the prices, discounts, conditions of sale, lists of customers to whom special discounts are allowed and special notes. This material relates to the complete list of mechanical goods manufactured by the various companies.

The work sheets reflect the changes made in the above particulars from time to time as recorded in the minutes and correspondence between the various companies. The correspondence consists of letters which are passed between the various companies between the dates of the meetings and at times the minutes of those meetings summarize the changes in particulars noted in the correspondence.

". . .

1. Prices for all lines of mechanical rubber goods (except molded goods and a few special items) have been and are fixed from time to time by actual or tacit agreement. . . .

2. The group also keeps lists, which are changed from time to time, of the various customers to whom special prices are given, based on their respective trade classifications as decided by the group. This means that the special price classifications are made available only to those purchasers whose names appear on the respective lists.

3. The group comprises representatives of all manufacturers of mechanical rubber goods in Canada, with the exception of a small concern in British Columbia, The Huntington Rubber Co., which, it is understood, consumes about fifty tons of rubber a year in its manufacturing operations and offers, at present, no real competition to the group.

". . ."

(Exhibit 1009)

The mechanical rubber goods in question are listed in Appendix A and comprise, broadly speaking, transmission and conveyor belting of many types, industrial hose of many types, fire and garden hose, packing of different kinds and other miscellaneous industrial rubber goods.

The exact nature of the arrangements differed somewhat from product to product and each company was not interested in every product. Goodyear, Dominion, Gutta Percha and Dunlop played the most prominent part in the arrangements. Goodrich manufactured a much smaller range of mechanical rubber goods than did the other four. Of the products listed in the work sheets, Barringham, Firestone, Griffith and Viceroy were, for present purposes, interested only in all rubber garden hose which accounted for only a small part of the sales value of mechanical rubber goods. Goodyear, Dunlop and Canadian Allis-Chalmers were the companies primarily interested in the arrangements relating to multiple V belts. Dunlop, Goodyear and Goodrich were the companies primarily interested in the arrangements relating to fractional horsepower belts for small motors. In respect of products bought by tender, notably conveyor belting and fire hose, there was agreement among the Companies interested, in respect of tenders. In respect of certain products there were also some more or less incidental understandings limiting the range to be made and the uses for which particular products would be supplied.

Meetings of branch managers of Dominion, Dunlop, Goodyear and Gutta Percha were held regularly in Montreal and Toronto and, from time to time, at other places, for the purpose of assisting in the implementation of the agreements and making recommendations about the classification of customers for discount purposes. Individual company price lists were based upon the work sheets. Deviations from the agreements occurred from time to time but, except upon occasion in the case of garden hose, were not extensive enough to upset seriously, the arrangements.

The design of these arrangements and their usual effect was to eliminate substantially, competition in the manufacture, distribution and sale of standard mechanical goods in Canada, except competition in salesmanship and service and some limited competition in quality. The effects of the elimination of competition among manufacturers within Canada was aggravated by the fact that the tariff, and understandings between certain of the Companies and their United States parent companies, substantially prevented competition from outside Canada making itself felt. Within Canada, the large capital investment required of any would-be entrant into the field of manufacture of the heavier and more standard lines gave additional stability to the agreements.

A large proportion of mechanical rubber products are producers' goods (i.e. goods used for the production of other goods) rather than consumers' goods and for this reason the effect of eliminating competition is more difficult to trace through to the ultimate consumer, but the detriment is no less real because dispersed. Even in the case of consumer goods the real detriment may be indirect, by way of failure to speed the improvements of manufacturing techniques and distributing patterns, rather than by undue enhancement of prices on the basis of existing costs.

Significant in illustrating the tendencies of combines are the facts relating to all-rubber garden hose. This cheaper product was not brought out

originally by any of the larger companies as might have been expected, but by one of the smaller producers then outside the joint arrangements. When it was brought out, instead of being left to enter into active competition with the existing reinforced hose, and to enjoy its natural price advantage in respect of the use for which it was suitable, it was drawn into the industry arrangements at an arbitrary price differential from that of reinforced hose. The tendency, instead of being toward a broadening of the market, was in the direction of dividing the existing market among more producers.

Although the activities of Firestone and Canadian Allis-Chalmers have been described from time to time throughout Part II relating to mechanical rubber goods, they stand in a somewhat different position from the other companies. In the case of Firestone there is no doubt about its participation in arrangements respecting all-rubber garden hose in the early war period but the evidence is sketchy from then on. In the case of Canadian Allis-Chalmers though the evidence is suggestive, it is not completely conclusive. These considerations do not affect the positions, either in respect of control or otherwise, of the other companies.

After a careful review of all the oral and documentary evidence and the representations that were made on behalf of the parties concerned I am of the opinion that the following, before and during the year 1947, have been party or privy to or knowingly assisted in the formation or operation of a combine within the meaning of the Combines Investigation Act, in respect of the manufacture, distribution and sale of mechanical rubber goods in Canada:

Barringham Rubber & Plastics Limited
Dominion Rubber Company, Limited
Dunlop Tire and Rubber Goods Company Limited
The B. F. Goodrich Rubber Company of Canada Limited
The Goodyear Tire & Rubber Company of Canada, Limited
G. L. Griffith & Sons Ltd.
Gutta Percha & Rubber, Limited
Viceroy Manufacturing Company Limited

D. The Tire Group

The evidence indicates that at the time this investigation commenced all the manufacturers in Canada of tires and tubes and one distributing company were parties to arrangements for preventing or lessening competition and fixing common prices in the field of replacement tires and tubes, i.e. those sold through dealers or otherwise to consumers as replacements, and to some extent in the field of original equipment, i.e. tires and tubes sold for placing on new vehicles and machines. The arrangements embraced passenger, bus-truck, implement and tractor tires and tubes.

In the replacement field the basic price is the consumer list price, intended as the normal consumer price, and from which the dealer price is derived by subtraction of a discount. These prices were agreed upon by

the Companies through the medium of meetings and correspondence, such correspondence usually passing through the hands of the secretary and manager of the Association in his capacity as secretary of the Tire Group. The procedure ordinarily followed in establishing new general price levels or individual prices for new items was to have the detailed prices worked out by a "pricing committee" which in the case of a general revision would work out the details of a percentage increase or reduction supplied them by the general or sales managers or, in the case of a new item, would find for it an appropriate price having regard to the general price range. Ordinarily, the agreements did not extend to the enforcing of retail prices from dealer to consumer, although at times when price reductions were considered abnormal in a particular district, joint action would be taken to correct the situation. From time to time meetings of branch managers were held for the purpose of implementing the policies established by the general and sales managers and minutes of such meetings were kept and copies supplied to head offices. Among the measures accomplished by such branch meetings were the confirming of agreed prices to large accounts like the provinces or railways and receiving and inquiring into complaints about price cutting. The purpose of such meetings is expressed, generally, by an official of one tire company in a letter to district branch managers dated March 5, 1946:

" . . .

There is, however, a definite need to have some common meeting ground on some of the problems on truck tire pricing and selling activity at the present time and, therefore, all companies have said that they will write to their District Managers and Branch Managers requesting that the practice of holding managerial meetings at local points will be reinstated at which these various problems can be discussed and cleared. It is our desire that you co-operate in the organizing of these meetings and the maintenance of them for the purpose of maintenance of a strong and sound resale program.

. . ."

(Exhibit 2773)

In addition to the sale of tires through dealers, the Tire Companies recognized certain large consumer accounts to whom they accorded a preferred and agreed upon discount from list. Notable among such classes were the "passenger transportation bus" companies. The chief qualification which the Tire Companies required for inclusion on the list of accounts so entitled was the operation of twenty-five vehicles. Other classes in respect of which the Tire Companies agreed upon specific discount entitlements were the Dominion, provincial and various municipal governments and the trans-continental railroads.

In the field of original equipment tires and tubes, two main lists were established by agreements similar to those entered into in the replacement field. The first was the "base" list and the second the "preferred" list. The "base" list was the starting point for determination of net prices to automobile manufacturers or at least the larger of them. Competitive and confidential discounts from the "base" list determined the real price to, at least, these larger accounts. The evidence is obscure as to whether it was the understanding that the "base" list or recognized discounts therefrom would be adhered to in respect of any class of customer, although an official of one Canadian tire company in writing to the parent company stated: "... in Canada we have three sets of equipment prices - (1) Preferred prices - those extended to very small manufacturers or assemblers of vehicles; (2) Base prices - extended to important manufacturers or part assemblers of vehicles in Canada, and then (3) Confidential prices to Ford, General Motors and Chrysler, and probably Studebaker and Nash . . ." (Exhibit 2541E). The "base" price was of sufficient significance to be maintained by agreement over the years, but having regard to the positive evidence that discounts were competitive in certain cases and the lack of definite evidence that common real prices were applied in other cases, the record cannot be said to indicate prevention of competition in the area of the base price.

There is seemingly a wide divergence between "base" prices in the original equipment field and dealer prices in the replacement field, e.g. one popular tire was listed in 1947 at \$7.29 on the "base" list and \$16.70 on the dealer list and \$21.55 on the consumer list. The dealer might earn discounts up to about 12 per cent off the dealer list. Although such matters as the confidential discounts applied to "base" prices make real comparison impossible, it does appear that there is a very great real difference which may be explained in part by such factors as large orders permitting some degree of planned operations, economies in sales expenses and also the advertising value that attaches to the placing of tires on new vehicles. It was explained in evidence, however, that the "base" prices bear no relationship to the consumer or dealer prices in the replacement field; that the former were set by reference to United States prices of original equipment tires, since both the large automobile manufacturing companies and the large tire manufacturing companies had parent companies in the United States who dealt with each other there so that the Canadian automobile manufacturing companies were in constant touch with the United States prices and ready to import at any time it was to their advantage to do so.

The "preferred" price list in the original equipment field was a different matter. It was 15 to 25 per cent higher than "base", the preference being by comparison with dealer prices in the replacement field. It was agreed upon from time to time by the Companies as the list of prices to be quoted to small or comparatively small concerns engaged in the manufacture of rubber tire bearing equipment, to whom it was considered desirable to offer better prices than "dealer" but not as attractive as "base". The "preferred" price list, supplemented by a commonly recognized list of accounts who were entitled to the preferred price, was intended to be and the evidence indicates that it was respected by the Companies. There were also recognized lists of firms entitled to buy tractor and farm implement tires at preferred prices and these lists also appear to have been respected.

In addition to agreement upon common list prices in the fields above specified, there was also agreement upon a common "bonus" structure which was an important part of each dealer's contract with his supplier, and upon other price components like shipping charges, which, if determined independently, might have disturbed the main agreements. In some cases these complementary matters were expressly agreed upon and in other cases there was tacit agreement not to depart from what had become trade practices.

The Companies varied greatly in importance. The three largest accounted in 1948 for approximately 35 per cent, 22.5 per cent and 18.5 per cent respectively of all sales and the other five ranged from 8 per cent down to 2.5 per cent. The largest company exerted a dominant influence on the terms of the common arrangements and the smallest companies exerted very little influence. All, however, gave their adherence to the common policies, once established.

Such adherence, however, was not perfect. The evidence in the case of tires and tubes does not establish the clear and consistent pattern that it does in the case of mechanical rubber goods and it leaves areas of considerable obscurity as for example, the exact purpose and the effect of the agreed upon "base" price in the original equipment field. There is also the competitive factor of the so-called private brand tires which are not distributed by the Companies in the Tire Group, although they are practically all manufactured by such Companies. In addition, the evidence indicates frequent deviations from the agreed practices. Degrees of competition, therefore, remained in the tire market, competition being strongest in the sale of original equipment tires to the larger automobile manufacturers. A degree of competition also existed in the sale of replacement tires through dealers to the consumer public. Restraint was strongest in the sale of replacement tires to certain large users like passenger bus transportation companies and government and municipal departments and in original equipment sales to small manufacturers of miscellaneous vehicles. Substantial restraint upon competition existed, however, over the replacement field generally as well as over part of the original equipment field.

Having due regard to the factors above mentioned but also to the dominant position of the Companies in the tire field, it clearly appears that the pricing arrangements above referred to have lessened competition to an extent that is to the detriment of the public.

In making and maintaining these arrangements the parties were assisted by the Association which afforded them the secretarial assistance of its secretary and manager.

I am of the opinion, therefore, after a careful review of all the oral and documentary evidence and the representations that were made on behalf of the parties concerned, that the following, in the fall of 1947, were party or privy to or knowingly assisted in the operation of a combine within the meaning of the Combines Investigation Act, in respect of the manufacture, distribution and sale of passenger, bus-truck and tractor and farm implement tires and tubes in Canada:

Dominion Rubber Company, Limited
Dunlop Tire and Rubber Goods Company Limited
Firestone Tire & Rubber Company of Canada Limited
The General Tire & Rubber Company of Canada Limited
The B. F. Goodrich Rubber Company of Canada Limited
The Goodyear Tire & Rubber Company of Canada, Limited
Gutta Percha & Rubber, Limited
Seiberling Rubber Company of Canada, Limited
The Rubber Association of Canada

E. The Accessory Group

The arrangements relating to the distribution and sale of accessories and repair materials are closely related to the arrangements relating to the distribution and sale of replacement tires. The Companies concerned are the same with one exception. The products include such things as fan belts, radiator hose, car mats and tire patching and repair materials, many of which are sold through the same channels as replacement tires. The company officials who attended the accessory meetings to be mentioned and initiated or worked out the details of the arrangements to be described, were responsible to the tire sales managers of the Companies. The existence of arrangements among the Companies relating to accessories and repair materials followed naturally from the arrangements relating to tires and tubes and the former arrangements reinforced the latter by preventing the tire and tube arrangements from being upset by companies seeking to influence the sale of tires and tubes by offering better terms than their competitors in the sale of accessories and repair materials.

The Companies engaged in the manufacture, distribution and sale of the rubber accessories and repair materials in question held meetings during the period covered by this Report which were generally called "Accessory" meetings. These meetings were attended by persons who were referred to as the managers of the Accessory Divisions of the Companies. At such meetings the Accessory representatives (as they were also called) agreed upon prices and other conditions of sale for accessories and repair materials. The price structure so agreed upon involved mainly list prices to "dealers", who might be regarded as retailers or end-use men, and discounts therefrom to jobbers and in some cases also to dealers.

The decisions of the Accessory representatives were embodied in the Accessory minutes and were subject to review and approval or veto by a sales managers' or a general managers' meeting of the same Companies. It was the practice to report back such approval or veto and to incorporate it in the appropriate Accessory minute. A typical Accessory minute setting out agreed prices and dated July 24, 1940 appears at page 383 as Exhibit 2284. The memorandum between officers of one of the Companies dated October 7, 1947 which appears at page 411 as Exhibit 2508 indicates that the arrangements were in effect when this investigation was commenced in the fall of 1947.

For the reasons already given, the arrangements relating to accessories and repair materials are to be regarded as complementary to and supporting those relating to tires and tubes. The parties to the

arrangements relating to accessories and repair materials in the fall of 1947 were the same as the parties to the arrangements relating to tires and tubes except that The General Tire & Rubber Company of Canada Limited should be excluded from the former group.

F. The Footwear Group

For many years before the war there were price agreements among the principal manufacturers in Canada of rubber waterproof and tennis or canvas footwear. In 1932 the Companies then manufacturing entered into a formal written agreement which provided for sales quotas, common prices and the payment of penalties by Companies exceeding their quotas to the Companies that fell short. A second but less far-reaching written agreement replaced the first one in 1937 and lasted until 1938. These written agreements broke down because of a number of unsettling factors including the development of mistrust among the Companies and the entry into the industry of a new company which did not subscribe to the arrangements. During 1938 and 1939 the situation was competitive although at no time were attempts to re-establish understandings lacking. By 1940 or 1941 a substantial amount of agreement had again been achieved although the participation of at least one of the earlier parties - Kaufman - was absent. During the control period meetings were held with regularity and were largely concerned with problems related to controls and with the furtherance of wartime control policies. By cooperative effort among the Companies and between the Companies and the control authorities, ranges were reduced, technical knowledge was exchanged and other economies were effected which made possible the supplying of civilian needs at prices which moved very little above pre-control levels. At meetings held during this period the Companies also inaugurated measures which were designed to eliminate competition and control prices when normal conditions had been restored.

The post-war planning which developed in the footwear division of the rubber industry, in common with other divisions, beginning in 1943, was accompanied in the footwear division particularly by discussions as to the possible application of the Combines Investigation Act and at least tentative plans were made to seek information from the Commissioner of the Act as to the degree of joint action which the Act permitted. These discussions are fully described in Chapter 3 of Part VIII.

When this investigation commenced in the fall of 1947, normal conditions had not completely returned to the industry because certain material shortages still existed and the accumulated demand of the war years had not been entirely satisfied. Agreements were then in effect, however, which were not explainable upon any considerations of public policy or orderly decontrol but which had been adopted as normal industry policy.

These arrangements, which involved the suppliers of approximately 85 per cent of all rubber footwear produced in Canada, established a common price structure for the standard lines of waterproof and canvas footwear. Rubber footwear is sold to some extent through jobbers, but mostly it is sold direct to retailers. The common price structure embraced agreement upon list prices and other components of pricing. There was express agreement, for example, upon what should constitute the standard range, for without some understanding as to the specifications of the lines of footwear to which the prices would apply, it would have been difficult to achieve effective agreement upon prices. Individual specialties were permitted subject to specification and pricing qualifications designed to prevent specialties from being used in competition with the standard range. A discount system was agreed upon whereby all but the smallest customers were classified into categories in general accord with their combined purchases from the whole Group and it was understood that all Companies would give the same discount to each classification. There was agreement express or implied upon ancillary terms and conditions of sale to the extent necessary to prevent the primary agreement upon prices from being defeated by competition in secondary matters.

All the Companies were not of equal stature in arriving at such agreements. It was not always a question of what the majority preferred. From time to time it was a question of agreement upon the basis of a program put forward by the dominant company in the field, or no agreement at all. From time to time some of the participants would have preferred different terms but they preferred agreement upon the terms available to no agreement at all.

One of the Companies, Cambridge, stands in a somewhat different position from the others and is to be excepted from some of the foregoing general statements. Cambridge had a discount structure peculiar to itself; it was drawn into the manufacture of standard lines during controls when the specialties which it had made were curtailed by force of control measures; and when this investigation commenced it was beginning to revert to the specialty field. Having regard, however, to its participation in the activities of the Group it cannot be omitted from mention as a party.

In making and maintaining the arrangements above described the Companies were, during the latter years, assisted by the Association which afforded them the secretarial assistance of its secretary and manager.

Having carefully considered all the documentary and oral evidence and the representations made on behalf of the parties, I am of the opinion that, when this investigation commenced in the fall of 1947, there existed a combine, within the meaning of the Combines Investigation Act, whereby competition was lessened to a degree detrimental to the public, in the manufacture, distribution and sale of rubber footwear; and that the following were parties or privy to or knowingly assisted in the formation or operation of such combine:

The Acton Rubber Limited
Cambridge Rubber, Ltd.
Dominion Rubber Company, Limited
The B.F. Goodrich Rubber Company of Canada Limited
Gutta Percha & Rubber, Limited
Kaufman Rubber Company Limited
The Miner Rubber Company Limited
Northern-Woodstock Rubber Limited
The Rubber Association of Canada

G. The Heels and Soles Group

During the pre-control period (1936 to 1941) the principal companies engaged in the manufacture and sale of rubber heels and soles in Canada met together from time to time and agreed upon the prices to be charged to the principal classes of their customers. The principal classes were the shoe manufacturers and the shoe findings trade, the latter comprising chiefly jobbers and repairmen. For example, the minutes of a meeting held on May 7, 1941 record that "It was agreed (a) That list prices should be advanced by approximately 10%; . . . (c) New list-prices will be in effect as of May 7th, 1941;" and attached to the minutes was a comprehensive list of prices for east and west (Exhibit 603). In the case of the shoe manufacturers the prices to be quoted were, ordinarily, list, without discount other than for cash and the customer classification of shoe manufacturer needed no definition. In the cases of jobbers and repairmen however, a discount structure was involved and complementary agreement upon who would be recognized as jobbers was necessary if the price agreements were to be effective. Agreements express or tacit were reached upon these matters. Such other components of pricing as credit and shipping terms were by agreement or practice sufficiently uniform as not to disrupt the price structure by being used as instruments of competition.

By the time controls ended, the ten companies who, in 1938 had been manufacturing heels and soles for sale, were reduced to five by withdrawals from the industry because of unsatisfactory returns. Of the five remaining companies, one was of little significance in the industry. The remaining four were Holtite, Panther, Goodyear and Miner.

During the control period (1941 to 1947) the framework of the common price structure was in fact kept intact and such structure was continued into the post-control period with the intention that it should be the normal pattern of the industry. On February 16, 1948 the manager of the shoe products department of one of the Companies wrote to his general manager that "In August 1947, all manufacturers of rubber heels held a meeting with reference to a general price increase [to shoe manufacturers]. It was agreed, however, this did not seem advisable in view of special discounts in effect. All present agreed to withdraw special discounts as of September 1st, 1947 rather than have an overall price increase" (Exhibit 747).

The agreements upon prices to shoe manufacturers were, frequently, not very well observed. Early in the control period the control authorities for a time permitted the heel and sole manufacturers to charge list prices without discount, to shoe manufacturers. Later this decision was reversed and the heel and sole manufacturers were directed to reinstate the particular confidential discounts they had been giving, in deviation from industry agreements. In its efforts to have this directive repealed, the industry found itself in the position of arguing that discounts from list had been the exception and list prices the norm. The price control authorities remained unconvinced and the directive remained in effect. Again, following the August 1947 agreement, each company regarded most of the others with suspicion and in some cases held back to see what the others would do. Suspicions were apparently justified and at least one company that had followed the agreement in respect of certain accounts felt compelled, early in 1948, to reinstate several confidential discounts retroactively. Nevertheless the evidence indicates that the agreement was in effect over a large area of the market in the fall of 1947, and in January 1948 had not been abandoned. In that month one company official wrote to another about reports that another company was extending a special discount and said that he was getting in touch with the company concerned -

". . .

. . . and at least let them know that we are aware of what is going on, and that we do not intend to sit back and let this state of things exist amongst the trade when it was agreed that all special discounts would be discontinued as of Sept.

". . ."

(Exhibit 667)

In respect of sales to the shoe findings trade the evidence in the post-control period is chiefly evidence of agreement upon common jobbers' lists, which evidence, for the reasons explained in Part VI indicates an overall agreement upon prices. This evidence continued, to take a number of examples, through July and August 1947 when the lists were completely revised at industry meetings (Exhibit 851, 852) and through October 1947 when one company wrote the secretary of the Association in an endeavour to have a Quebec account recognized (Exhibit 753), down to at least January 1948 when one of the Companies, in writing to an account for information as to its qualifications, advised that "we will do all we can in getting you on the jobbers' list." (Exhibit 692).

Having regard to all the circumstances, this common action upon jobber recognition, can only be explained upon the basis of agreement to maintain common list prices and discounts.

The Companies were assisted in making and maintaining certain of the agreements above referred to by The Rubber Association of Canada, which made available certain of its employees for the purpose of supplying secretarial assistance to the Group of heel and sole companies.

Having carefully reviewed all the oral and documentary evidence and the representations that were made on behalf of the Companies I have come to the conclusion that competition in the manufacture, distribution and sale of rubber heels, soles and slab soling has been lessened to a degree which is detrimental to the public interest, and that the following parties, when this investigation was commenced in the fall of 1947, were parties or privy to or knowingly assisted in the formation or operation of a combine within the meaning of the Combines Investigation Act,

The Goodyear Tire & Rubber Company of Canada, Limited
The Holtite Rubber Company of Canada, Ltd.
The Miner Rubber Company Limited
Panther Rubber Co. Ltd.
The Rubber Association of Canada

H. The Clothing Group

From 1938 to 1948 inclusive there were at no time more than four important manufacturers of vulcanized rubber clothing in Canada. The distribution system mainly involved sales by the manufacturers direct to retailers at list prices and also to jobbers at a discount of 15 per cent from such list prices. Some large retailers were accorded jobber terms and agents acting in lieu of company branches were allowed 10 per cent.

The vulcanized rubber clothing manufacturers made up a group of the rubber industry known as the Vulcanized Rubber Clothing Group. One company, both by reason of its leading position and of the experience of its officials, took the lead in organizing the Group. Express or tacit agreements upon list prices and such supporting factors as discounts and jobbers' lists were arrived at in correspondence and at meetings of the Group. Beginning in August 1945 the secretary of the Rubber Association acted in the capacity of secretary to the Group.

The documentary evidence relating to this branch of the industry was perhaps less than that relating to any other branch, but, taken with the oral evidence, it clearly indicates a pattern of agreement prior, during and subsequent to controls, which was obviously intended as the normal pattern of the industry.

A senior employee of one of the Companies, writing to a salesman on May 21, 1946 stated: "The Jobbers' List set-up on the Rubber Clothing is simply this. The Vulcanized Rubber Clothing Manufacturers, that is Miners, Kaufmans, Barringham, C.G.R. and Tower have an Association which has nothing to do with any other rubber products whatsoever, with identical prices on identical garments and a Jobbers' List known to all and any additions to the Jobbers' List must be cleared by all Companies . . ." (Exhibit 218c). The general sales manager of another of the Companies wrote on July 4, 1945:

"Enclosed is a sample Price List #45 for Baruco Waterproof Clothing, which is the new set-up of the Rubber Association prices. These are subject to the Jobber's discount of 15 Percent and any wholesale jobber that you have in Toronto should be notified regarding our new set-up of prices. We are now in with the rest of the rubber boys on this business and every one price is the same. There won't be any talk about Barringham selling goods cheaper than anyone else. What we will have to find out and watch is whether they are chiselling here or there. Lets hear from you."

(Exhibit 719)

When inquiries leading up to the commencement of this investigation were made in the summer of 1947 the industry arrangements, which had originated long before controls, were still intact.

Having considered all the documentary and oral evidence and the representations made on behalf of the parties, I am of the opinion that there existed a combine, within the meaning of the Combines Investigation Act, in respect of the manufacture, distribution and sale of vulcanized rubber clothing, and that the following were parties or privy to or knowingly assisted in the formation or operation of such combine during the year 1947:

Barringham Rubber & Plastics Limited
Canadian General-Tower Limited
Kaufman Rubber Company Limited
The Miner Rubber Company Limited
The Rubber Association of Canada

(Sgd.) T. D. MacDonald

Commissioner,
Combines Investigation Act

Ottawa,
May 21, 1952

APPENDIX A

Main Classes of Products in the Work Sheets

1. BELTING

Conveyor

Bucket Elevator Belts
Compass Cord Conveyor Belting
Electric Static Conducting Conveyor Belts
Grain Elevator Belting (Line)
Grain Elevator Belting (Terminal)
Industrial Conveyor Belting
Ore Elevator Belting
Package Conveyors
Sanitary Conveyor Belts
Stepped Ply Conveyor Belts
Ustex Conveyor Belting
Wet Ore Bucket Elevator Belting

Transmission

Combine Harvester Belts
Deck Belts, Short Endless
Electric Static Conducting Belting
Endless Compass Belts
Endless Hammermill Belts
Fractional Horsepower Belts
Grader Belting
Hog Beater Belting
Multiple V Belts
Other Endless Belts
Other Roll Belting
Pulley Lagging
Roll Belting
Snowmobile Belting
Textile Spinner Service Belting
Thresher Belting (Straight)
Thresher Belts (Endless)

2. HOSE

Fire

Chemical Engine Hose
Corporation Fire Hose
Fire Engine Suction Hose
Forestry Hose
Mill Fire Hose
Rubber Covers on Cotton Rubber Lined Hose

2. HCSE, Cont'd.

Fire, Cont'd.

Soft Suction Hose
Suction Hose for Portable Fire Equipment
Underwriters Fire Hose
Unlined Linen Forestry Hose
Unlined Linen Hose

Garden

All Rubber Garden Hose
Cord or Braided Garden Hose
Wrapped Ply Garden Hose

Industrial

Acetylene Hose
Acid Conducting Hose
Acid Resisting Hose
Acid Suction Hose
Agricultural Spray Hose
Air Brake Hose
Air Charging Hose
Air Compressor Hose
Air Drill Hose
Air Signal Hose
Boiler Washing Hose
Brewers Hose
Car Heating Hose
Gasoline Curb Pump Hose
Gasoline Conducting Hose
Gasoline and Oil Conducting Hose
High Pressure Discharge Water Hose
Hose Coverings
Hot Water Hose
Injector Hose
Material Conducting Hose
Metal Lined and Synthetic Tube Gasoline Hose
Oil Conducting Hose
Oil Proof Hose
Oil Suction Hose
Oil and Gasoline Combination Suction and Discharge Hose
Other Discharge Hose
Other Spray Hose
Other Suction Hose
Oxygen Hose
Paper Machine Hose
Pneumatic Tool Hose
Radiator Hose

2. HOSE, Cont'd.

Industrial, Cont'd.

Rock Wool Insulating (Blowing) Hose
Rotary Drill Hose
Sand Blast Hose
Sander Service Hose
Sanitary Hose
Sewer Hose
Shaft Sinking Header Hose
Solvent and Paint Spray Hose
Specifications 20-103, C-6-7 and AN-ZZ-H-456A, DWG. AN-884
Sprinkler Hose
Steam Hose
Steam Heat Hose
Tank Wagon and Tank Car Hose
Tender Hose
Thresher Goods Hose
Vacuum Hose
Vinegar Conducting Hose
Vinegar Suction Hose
Water Hose
Water Suction Hose
Welding Hose

3. MISCELLANEOUS RUBBER GOODS

Baby Carriage Tire
Diaphragms
 Pump Diaphragms
 Pulp Screen Diaphragms
Flanged Rubber Elbows
Flanges (Rubber)
Linings
 Liquid Trough Lining
 Ore Launder, Ore Mineral Cell Separator, Ore Chute Lining
 Skirt Board Rubber
 Soft or Hard Rubber Lined Pipes and Fittings
 Tank, Tank Cars and Miscellaneous Equipment Linings
Mats, Matting & Flooring
 Corrugated Matting
 Dot and Pebbled Matting
 Inlaid Tiling
 Moulded Mats
 Perforated Mats
 Plain Matting
 Pyramid Matting
 Ribbed Runner Matting

Mats, Matting & Flooring, Cont'd.

- Sheet Flooring
- Switchboard and Solid Mats
- Tiling
- Tile Mats

Packing

- Bag Printing Rubber
- C.I. and C.B.S. Sheet Packing
- Gasket Tubing
- Hydraulic Packing
- Square Duck Packing
- Red Sheet Packing
- Spiral Packing

Paddles

- Hog Beater Paddles
- Moulded Paddles

Play Pipes

- Rubber Flexible Play Pipes
- Rubber Tubes for Flexible Play Pipes
- Nozzle Ends

Rolls and Roll Covering

- Couch Rolls
- Husker Rolls
- Inking Rolls
- Roll Coverings for Pulp and Paper Mill Rolls
- Roll Coverings for Industrial Rolls
- Roll Coverings for Printing Rolls
- Rubber Covered Industrial Rolls
- Rubber Covered Rolls for Combines
- Rubber Covered Suction Press Rolls
- Slip-on Wringer Rolls
- Special Composition Rolls
- Wormed Felt Rubber Covered Rolls

Salvage Covers

Sleeves

- For Conveyor Idlers
- Dredge Sleeves
- Suction Sleeves

Sponge Rubber for Stamp Manufacturers

Stamp Gum Rubber

Strapping for Manufacturers of Tire Chains

Strips, Filter Scraper

Trace Material for Harness Purposes

Tubing

- Gasket Tubing
- Drainer Tubing
- Fire Extinguisher Tubing
- Tractor Filling Tubing
- C.I. Tubing

Valves

- Condensor and Air Pump Valves
- Hot Pump and Cold Tank Valves
- Rubber Pump, Sanitary Pump, Feed Pump, General Service Pump,
Ash and Air Pump Valves

Valves, Cont'd.

- Ballast Pump, Jet Pump, Bilge Pump Valves
- Viner Blankets for Canning Companies
- Washers and Gaskets
 - Fire Hose Washers
 - Garden Hose Washers
 - Gaskets for Air Brake Hose
 - Gauge Glass Washers
 - Hexagon Washers
 - Hose Washers other than Garden Hose up to 2"
 - Pure Gum Washers
 - Suction Hose Washers
- Weatherstripping

4. ACCESSORIES AND METAL GOODS

- Adapters
- Admiralty Screwed Connections
- Alligator Belt Cutters
- Alligator Steel Belt Lacing
- Axes
- Axe Holders
- Belt Fasteners
- Bolt Bands
- Couplings
 - Couplings and Clamps for Garden Hose
 - Couplings for Curb Pump Hose
 - Spring Couplings
 - Couplings for Tank Wagon and Tank Car Hose
 - Boss Tri-Duplex Couplings
 - U.S. Rotary Bandless Couplings
 - Long Shank Couplings
 - Short Shank Couplings
 - Brass Couplings and Fittings - Blueprint 379-17219
 - Expansion Ring Couplings
 - Nunan and Stove Couplings
 - Thor Coupling Parts
 - Stream Flo or Scovill Couplings for Fuel Oil Hose
 - Boss Steam Hose Couplings
- Carts, Fire Hose
- Coverings for Hose
 - Rope
 - Marline Winding
 - Round Wire and Half Round Wire
- Crowbars
- Crowbar holders
- Cores of Metal for Table, Decker and Cylinder Couch Rolls
- Flexco H.D. Fasteners and Tools
- Fasteners, Belt

4. ACCESSORIES AND METAL GOODS, Cont'd.

Fittings

For Tire Pumps

For Tractor Filling Tubing

Guards, Wire for Filling Station Gasoline Hose

Lanterns

Nipples

Suction Hose Nipples

King Combination Nipples

Play Pipes

Spray Nozzles

Underwriters Play Pipes

Play Pipe Tips

Other Nozzles and Play Pipes

Play Pipe Holders

Spanners

Straps, Ladder

Tanks, Steel

Tubes, Metal for Curb Pump Hose

Union for Hose R.C.E./1

Valves

Chicago Hose Valves

Iron Foot Valves and Strainers

Wrenches

Universal Spanner Wrenches

Hydrant Wrenches

APPENDIX B

Schedule "B" of the Brief of the Rubber Association of Canada, being Entries and Exits, by Companies, in the Canadian Rubber Industry.

"Summary of Rubber Manufacturers Who Have Submitted Figures for the D.B.S. 'Annual Report on the Rubber Industry' Since 1925

	<u>No. Started Into Operation Since 1925</u>	<u>No. Who Have Ceased Operation Since 1925</u>	<u>No. Still in Operation</u>
1. Tire Manufacturers (x)	22	15	7
2. Rubber Footwear Manufacturers(xx)	13	6	7
3. Manufacturers of Other Rubber Products	109	63	46
(x) General Tire not classified as a manufacturer.			
(xx) Northern-Woodstock not classified as a manufacturer.			
Gutta Percha not classified as a manufacturer since mid 1950.			

Tire Manufacturers Who Have Submitted Figures for the D.B.S. 'Annual Report on the Rubber Industry' Since 1925

<u>Date to First Report</u>	<u>Name of Company</u>	<u>Address</u>	<u>Date Ceased to Report</u>
1925	Dominion Rubber Co. Ltd.	Kitchener, Ont.	
"	Quebec Rubber Co. Ltd.	Quebec, Que.	1928
"	Goodyear Tire & Rubber Co. of Canada, Ltd.	New Toronto, Ont. & Bowmanville, Ont.	
"	F. E. Partridge Rubber Co. Ltd. . .	Guelph, Ont.	1926
"	Firestone Tire & Rubber Co. of Canada Ltd.	Hamilton, Ont.	
"	Canadian Goodrich Co. Ltd.	Kitchener, Ont. (Changed to B. F. Goodrich in 1936)	
"	Oak Tire & Rubber Co. Ltd.	Oakville, Ont.	1926
"	x Dunlop Tire & Rubber Goods Co. Ltd.	Toronto, Ont.	
"	Gutta Percha & Rubber Ltd.	Toronto, Ont.	1949
"	K. & S. Tire & Rubber Goods Ltd. .	Toronto, Ont.	1930-1
"	Aero Cushion Inner Tire & Rubber Co. of Ont., Ltd.	Wingham, Ont.	1926
"	Gregory Tire & Rubber Co. Ltd. . .	Port Coquitlam, B.C.	1930-1
1926	Wingham Rubber Co. Ltd.	Wingham, Ont.	1930-1
1927	Coutlee Muir Rubber Co. Ltd. . . .	Montreal, Que.	1928
"	Hannon Tire & Rubber Co. Ltd. . .	Toronto, Ont.	1935
1928	Niagara Rubber Goods Ltd.	Beamsville, Ont.	1935
1929	No Change		
1930	(No Report on File for 1930)		
1931	Perfection Rubber Co. Ltd.	Lachine, Que.	1935
"	x Seiberling Rubber Co. of Canada, Ltd.	Toronto, Ont.	
"	Thorburn Tire & Rubber Mfg. Co. Ltd.	Toronto, Ont.	1933-34

x Seiberling commenced manufacturing tires for the General Tire & Rubber Co. of Canada, Ltd., in 1934 and ceased in 1937. Dunlop then commenced manufacturing General's tires and is still doing so.

<u>Date to First Report</u>	<u>Name of Company</u>	<u>Address</u>	<u>Date Ceased to Report</u>
1932	General Tire Corp. of Canada Ltd.	Oakville, Ont.	1935
1933	(No Report on File for 1933)		
1934	No Change		
1935	British Tire Co. of Canada Ltd.	Lachine, Que. (Changed to British Rubber Co. in 1945)	
"	Niagara Tubes Ltd.	Beamsville, Ont.	1937
1938-44	No Change		
1946-47	No Change		

RUBBER FOOTWEAR

<u>Reporting as at</u>	<u>Name of Company</u>	<u>Address</u>	<u>Date Ceased to Report</u>
1925	* Dominion Rubber Co. Ltd.	Montreal, Que. St. Jerome, Que. Granby, Que. Elmira, Ont. Kitchener, Ont. Port Dalhousie, Ont.	1932 1926 1930-1 1930-1
"	Miner Rubber Co. Ltd.	Granby, Que.	
"	Columbus Rubber Co. of Montreal	Montreal, Que.	1930-1
"	Northern Rubber Co. Ltd.	Guelph, Ont.	1942
"	Canadian Goodrich Co. Ltd.	Kitchener, Ont. (Became B. F. Goodrich Rubber Co. in 1936)	
"	Kaufman Rubber Co. Ltd.	Kitchener, Ont.	
"	* Gutta Percha & Rubber Ltd.	Toronto, Ont.	1950
1928	Eastern Rubber Co. Ltd.	Acton Vale, Que.	1929
"	Woodstock Rubber Co. Ltd.	Woodstock, Ont.	1940
1930	(No Report on File)		
1931	The Acton Rubber Co. Ltd.	Acton Vale, Que.	
1933	(No Report on File)		
1935	Cambridge Rubber Co. Ltd.	St. Rami, Que. (Ceased operation, 1949)	
1936	The British Rubber Co. of Canada Ltd. St. Laurent	(Changed to Lachine in 1945)	
1945	Bata Shoe Co. of Canada Ltd.	Batawa, Ont.	

- * Dominion shown as manufacturing shoes for Northern-Woodstock Rubber Ltd. in 1946 report.
- * Gutta Percha ceased production of footwear in 1950 and now has footwear made for it by Dominion.

OTHER RUBBER GOODS (Other than Tires or Footwear)

Reporting as at	Name of Company	Address	Date Ceased to Report
1925	Granby Elastic Web Ltd.	Granby, Que.	1930-1
"	Miner Rubber Co. Ltd.	Granby, Que.	
"	Coutlee Muir Rubber Co. Ltd.	Montreal, Que.	1928
"	Dominion Rubber Co. Ltd.	Montreal, Que. Kitchener, Ont.	
"	Panther Rubber Co. Ltd.	Sherbrooke, Que.	
"	Goodyear Tire & Rubber Co. of Canada, Ltd.	New Toronto & Bowmanville, Ont.	
"	Sterling Rubber Co. Ltd.	Guelph, Ont.	
"	Firestone Tire & Rubber Co. of Canada, Ltd.	Hamilton, Ont.	
"	W. J. Anderson Mfg. & Rubber Co. Ltd.	London, Ont.	1927
"	Canadian I.T.S. Rubber Co. Ltd.	West Toronto, Ont.	1931
"	Dunlop Tire & Rubber Goods Co. Ltd.	Toronto, Ont.	
"	Federal Machine & Rubber Co. Ltd.	Toronto, Ont.	1926
"	Gutta Percha & Rubber Ltd.	Toronto, Ont.	
"	K. & S. Tire & Rubber Goods Ltd.	Toronto, Ont.	1929
"	Kelton Rubber Co.	Toronto, Ont.	1940
"	I. B. Kleinert Rubber Co.	Toronto, Ont.	
"	Transparent Rubber Goods Co.	Toronto, Ont.	1928
"	S. C. Williams	Toronto, Ont.	
"	Locktite Patch Co.	Walkerville, Ont.	1934
"	Jos. Stokes Rubber Co. Ltd.	Welland, Ont.	
"	Canadian Battery Container Corp. Ltd.	Windsor, Ont.	1930-1
"	DeVilbiss Mfg. Co. Ltd.	Windsor, Ont.	1930-1
"	Atlas Rubber Co. Ltd.	Vancouver, B. C.	1926
1926	American Wringer Co. of Canada Ltd.	Farnham, Que.	
"	Western Rubber Works	Caledon, Ont. (Changed to Ottawa, Ont. in 1935)	
"	Lincoln Rubber Products Ltd.	Grimsby, Ont.	1927
"	Canadian Goodrich Co. Ltd.	Kitchener, Ont. (Changed to B. F. Goodrich in 1936)	
"	Federal Rubber Mfg. Co. Ltd.	Wingham, Ont.	1928
1927	Acme Rubber Specialties Co.	Montreal, Que.	1928
"	Pall Mall Specialties	Montreal, Que.	1930-1
"	Anderson Industries Ltd.	Sherbrooke, Que.	1929
"	Verner Smith Co. Ltd.	Rockwood, Ont.	1939
"	Waterloo Rubber Specialty Mfg. Co. Ltd.	Waterloo, Ont.	1928
"	Durable Mat. Co. (Canada) Ltd.	Victoria, B. C.	1942
1928	Paramount International Rubber Co. Ltd.	Farnham, Que.	1929
"	Canadian General Rubber Co.	Galt, Ont.	
"	G. L. Griffith & Sons Ltd.	Stratford, Ont.	
"	National Rubber Co. Ltd.	Toronto, Ont.	
1929	Bowes 'Seal Fast' Co. Ltd.	Hamilton, Ont.	1946
"	Hannon-Knight Ltd.	Toronto, Ont.	1930-1
"	Seiberling Rubber Co. of Canada Ltd.	Toronto, Ont.	
1930	(No Report Available)		

OTHER RUBBER GOODS (Cont'd)

<u>Reporting as at</u>	<u>Name of Company</u>	<u>Address</u>	<u>Date Ceased to Report</u>
1931	Kaufman Rubber Co. Ltd.	Kitchener, Ont.	
"	Perfection Rubber Co. Ltd.	Lachine, Que.	1935
"	Thorburn Tire & Rubber Mfg. Co. Ltd.	Toronto, Ont.	1934
"	Stedfast Rubber Co. (Canada) Ltd. ...	Granby, Que.	
"	Holtite Rubber Co. of Canada Ltd. ..	Drummondville, Que.	
"	Air-Tite Mfg. Co.	Windsor, Ont.	1932
"	Canadian Rubber Products Co.	Guelph, Ont. (Moved to Toronto in 1934)	
"	Central Rubber Co.	Toronto, Ont.	1945
"	The Jem Rubber Co. Ltd.	Toronto, Ont.	1944
"	Trafalgar Rubber Co. Ltd.	Trafalgar, Ont.	1942
"	Universal Mats of Ont.	Toronto, Ont.	1935
"	Viceroy Mfg. Co. Ltd. (Cdn. I.T.S.) ...	Toronto, Ont.	
"	Gregory Syndicate	Port Coquitlam, B.C.	1934
"	Universal Mats Ltd.	Victoria, B. C.	1932
"	Durable Mat Co. (Eastern) Ltd.	Toronto, Ont.	1942
1933	(No Report Available)		
1934	Francis Perry & Co. Ltd.	Montreal, Que.	1945
"	Air-Tite Rubber Products Ltd.	Toronto, Ont.	1935
"	Canadian Mechanical Rubber Corp. Ltd.	Orillia, Ont.	1935
"	Independent Laboratories Ltd.	Eastview, Ont.	1935
"	Trafalgar Rubber Co. Ltd.	Cooksville, Ont.	1942
"	Triangle Rubber Co.	New Toronto, Ont.	1935
"	A. C. Rubber Mfg. Co. Ltd.	Vancouver, B. C.	
1936	Canada Matting Co.	Toronto, Ont.	
"	Cook Fabric Mat Mfg. Co.	Kingston, Ont.	1937
"	Novelty Rubber Co.	Hamilton, Ont.	
"	Hodgson, W.H. & Co.	Moose Jaw, Sask.	1948
1937	Ban-Bro Mat Co.	Winnipeg, Man.	1939
"	Watson, Frank	Winnipeg, Man.	1942
1938	Condon Seamless Rubber Products ...	Windsor, Ont.	1939
"	Even-Cure Ltd.	Toronto, Ont.	1940
"	Adhesive Surfaces, Ltd.	Westmount, Que.	1940
1939	Barringham Rubber Co. Ltd.	Oakville, Ont.	
"	Canadian Collard Products Ltd.	Windsor, Ont.	
"	Cook, R. W.	Rockwood, Ont.	1942
"	Ever-Wear Mat Co.	Winnipeg, Man.	1942
1940	Canada Lastex Ltd.	Montreal, Que.	
"	Trutred (Canada) Ltd.	Toronto, Ont.	1946
1941	Girard & Fils	Montmorency, Que.	
"	St. Lawrence Rubber Co. Ltd.	Farnham, Que.	
"	Tillotson Rubber Co. Reg'd.	St. John's, Que.	
"	Modern Rubber Co. Ltd.	Windsor, Ont.	1942
"	Ruflex Threads, Ltd.	Hamilton, Ont.	
1942	Allied Rubber Inc.	Montreal, Que.	

OTHER RUBBER GOODS (Cont'd)

<u>Reporting as at</u>	<u>Name of Company</u>	<u>Address</u>	<u>Date Ceased to Report</u>
1943	Chamberlain Engineering (Can.) Ltd.	Eastview, Ont.	1945
"	Ever-Wear Tire Products Co.	Winnipeg, Man.	1948
"	Tire Repair (Aero) Ltd.	Edmonton, Alta.	1945
1944	American Rubber Patch Co. Reg'd. ...	Montreal, Que.	1947
"	Canadian Iodi Super Treads Ltd.	Toronto, Ont.	1946
"	Dayton Rubber Co.(Canada) Ltd.	Toronto, Ont.	
"	Huntington Rubber Mills of Can.Ltd..	Port Coquitlam, B. C.	
1945	A. McKillop & Sons Ltd.	West Lorne, Ont.	1948
"	Ever-Dure Mat Co.	Winnipeg, Man.	1947
"	Western Mat Co.	Vancouver, B. C.	
"	British Rubber Co. of Canada Ltd. ..	Lachine, Que.	
1946	Bemis Associates of Canada, Ltd. ...	Sherbrooke, Que.	
"	General Latex & Chemicals (Can.) Ltd.	Verdun, Que.	
"	National Carpet, Reg'd.	Montreal, Que.	1947
"	Nuttall Supply Co.	Brantford, Ont.	1947
"	Vernon C. Watson	Long Branch, Ont.	1948
"	Frank Wells	Toronto, Ont.	1948
"	Martin-Brownlee Rubber Mat Mfg.Co..	Saskatoon, Sask.	1947
"	Fabrix Rubber Mat Co. Ltd.	Edmonton, Alta.	
1947	Best Rubber Carpet Reg'd.	Montreal, Que.	
"	Bilrite Tire Co. Ltd.	Toronto, Ont.	
"	Ontario Fabrix Mat Co.	Maryhill, Ont.	
"	Alberta Rubber Mat Industry	Calgary, Alta.	1948
"	B. C. Rubber Mat Co.	Vancouver, B. C.	
1948	West Lorne Manufacturing Co.	West Lorne, Ont."	

APPENDIX C

Following is a list of manufacturers of rubber products reporting to the Dominion Bureau of Statistics in 1948, as taken from the D. B. S. publication "The Rubber Industry 1948". This list is referred to on page 664.

"List of Manufacturers of Rubber Goods Reporting in 1948"

INDEX TO MAIN PRODUCTS (1) Rubber Footwear (2) Rubber Tires (3) Other Products

<u>Name of Company</u>	<u>Address</u>	<u>Main Products</u>
<u>QUEBEC</u>		
The Acton Rubber Ltd.	Acton Vale	(1)
Allied Rubber, Inc.	7230 Alexandra St., Montreal	(3)
American Wringer Co. of Canada Ltd.	Farnham	(3)
Bemis Associates of Canada, Ltd.	Sherbrooke	(3)
Best Rubber Carpet, Reg'd.	1583 rue Iberville, Montreal	(3)
The British Rubber Co. of Canada, Ltd.	500-20th Ave., Lachine	(1) (2) (3)
Cambridge Rubber Ltd.	St. Remi	(1)
Canadian Iatex Ltd.	1665 Notre Dame St.E., Montreal	(3)
Dominion Rubber Co. Ltd.	St. Jerome	(1)
Dominion Rubber Co. Ltd.	1806 Notre Dame St.E., Montreal	(3)
Dominion Rubber Co. Ltd.	1840 Notre Dame St.E., Montreal	(3)
(Latex and Reclaim Division)		
General Iatex and Chemicals (Canada) Ltd.	425 River St., Verdun	(3)
Girard & Fils Ltee	Montmorency	(3)
The Goodyear Tire & Rubber Co. of Canada Ltd.	Industrial Centre #5, Quebec	(3)
The Holtite Rubber Co. of Canada Ltd.	Drummondville	(3)
The Miner Rubber Co. Ltd.	Granby	(1) (3)
Panther Rubber Co. Ltd.	Sherbrooke	(3)
St. Lawrence Rubber Co. Ltd.	Farnham	(3)
Stedfast Rubber Co. (Canada) Ltd.	Granby	(3)
Tillotson Rubber Co. Ltd.	St. John's	(3)

ONTARIO

Barringham Rubber & Plastics Ltd.	Oakville	(3)
Bata Shoe Co. of Canada, Ltd.	Batawa	(1)
Biltrite Tire Co. Ltd.	121 de Grassi St., Toronto	(3)
Canada Matting Company	178 Ossington Ave., Toronto	(3)
Canadian General-Tower Ltd.	Middleton St., Galt	(3)
The Canadian Rubber Products Co. Ltd.	2 Scarlett Road, Toronto	(3)
Canadian Collord Products, Ltd.	985 St. Luke Road, Windsor	(3)
Central Rubber Company	400 Eastern Ave., Toronto	(3)
Dayton Rubber Co. (Canada) Ltd.	3723 Dundas St.W., Toronto	(3)
Dominion Rubber Co. Ltd.	51 Breithaupt St., Kitchener	(1)
Dominion Rubber Co. Ltd.	149 Strange St., Kitchener	(2) (3)
Dunlop Tire and Rubber Goods Co. Ltd.	870 Queen St.E., Toronto	(2) (3)

List of Manufacturers of Rubber Goods Reporting in 1948, Continued

<u>Name of Company</u>	<u>Address</u>	<u>Main Products</u>
The Firestone Tire & Rubber Co. of Canada, Ltd.	Beach Road, Hamilton	(2) (3)
The B. F. Goodrich Rubber Co. of Canada, Ltd.	521 King St. W., Kitchener	(1)(2) (3)
The Goodyear Tire & Rubber Co. of Canada, Ltd.	Bowmanville	(2) (3)
The Goodyear Tire & Rubber Co. of Canada, Ltd.	New Toronto	(2) (3)
Gutta Percha and Rubber Ltd.	160 West Lodge Ave. Toronto	(1)(2) (3)
G. L. Griffith & Sons Ltd.	341 Erie Street, Stratford	(3)
Kaufman Rubber Company, Ltd.	410 King St.W., Kitchener	(1) (3)
I. B. Kleinert Rubber Company	91 Wellington St.W., Toronto	(3)
West Lorne Manufacturing Co.	West Lorne	(3)
National Rubber Co. Ltd.	5 Wiltshire Ave., Toronto	(3)
Northern-Woodstock Rubber Ltd. (Selling only)	60-62 Front St.W., Toronto	(1)
Novelty Rubber Company	150 Canada Street, Hamilton	(3)
Ontario Fabrix Mat Company	Maryhill	(3)
Ruflex Threads, Ltd.	96 Gore St., Hamilton	(3)
Seiberling Rubber Co. of Canada Ltd.	99 Paton Road, Toronto	(2)(3)
Sterling Rubber Co. Ltd.	Guelph	(3)
Joseph Stokes Rubber Co. Ltd.	Welland	(3)
Viceroy Manufacturing Co. Ltd.	1649 Dupont St., Toronto.	(3)
Western Rubber Co. of Canada	Alton	(3)
S.C. Williams	Woodbridge	(3)

ALBERTA

Fabrix Rubber Mat Co. Ltd.	10,027-92nd St., Edmonton.	(3)
----------------------------	----------------------------	-----

BRITISH COLUMBIA

A.C. Rubber Manufacturing Co. Ltd.	1430 Burrard St., Vancouver	(3)
B.C. Rubber Mat Company	1901, 1st Ave.W., Vancouver	(3)
Huntington Rubber Mills of Canada, Ltd.	Port Coquitlam	(3)
Western Mat Company (1947)	378 Powell St., Vancouver	(3)"

Government
Publications

RECORDING SECT. DEC 15 1964

Government
Publications

~~FD~~
~~2161~~
~~022A5~~
~~cop. 7~~
~~Business~~
~~2~~

Canada. Restrictive Trade
Practices Commission

Rubber products; investiga-
tion into alleged combines
in the manufacture, distribu-
tion and sale of mechanical
rubber goods

Government
Publications

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

DECATALOGUED

